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FOI/PA# 1189930-1

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(Title) Commercial Acceptance(File No.) 196A-4834 X-1

*Vol I*

Item	Date Filed	To be returned		Disposition
		Yes	No	
1	8/26/87			Original notes of [redacted] (mw)
2	11/3/87			1) Supplement to Commercial Acceptance 2) Collateral Trust Agreement (mw)
3	11/30/87			Original notes of [redacted] (mw)
4	1-5-88			" " [redacted] (mw)
5	"			" " [redacted] (mw)
6	1-8-88			" " [redacted] (mw)
7	1-12-88			" " John Ellsworth (mw)
8	2-10-88			" " [redacted] (mw)
9	3-1-88			" " [redacted] (mw)
10	3-8-88			" " [redacted] (mw)
11	7/14/88			Original notes of [redacted] (mw)
12	7/14/88			Original notes of [redacted] (mw)
13	7/14/88			Original notes of [redacted] (mw)
14	7/14/88			Original notes of [redacted] (mw)
15	7/14/88			Original notes of [redacted] (mw)

b6  
b7C  
b7D

196A-4834/1a

SEARCHED [initials] INDEXED [initials]  
SERIALIZED [initials] FILED [initials]  
AUG 25 1987  
FBI - LOS ANGELES

Field File No. P-X 196- 1966

Serial # of Originating Document \_\_\_\_\_

OO and File No. LA 196A-4834-1a1

Date Received 7/8/87

From \_\_\_\_\_  
(Name of Contributor)

\_\_\_\_\_  
(Address of Contributor)

\_\_\_\_\_  
(City and State)

By \_\_\_\_\_  
(Name of Special Agent)

To Be Returned ☐ Yes ☒ No Receipt Given ☐ Yes ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6(e), Federal Rules  
of Criminal Procedure ☐ Yes ☒ No

Title: Commercial Acceptance Corporation  
FRW  
OO: L.A.

Reference: \_\_\_\_\_  
(Communication Enclosing Material)

Description: ☒ Original notes re interview of

\_\_\_\_\_

8/26/87  
MN

b6  
b7C

b6  
b7C  
b7D

CAC

52% - [ ]

20% - F

20 - [ ]

8% - Elsworth

B

85% - [ ]

8% - Cla

[ ] - > 7  
[ ]

b6  
b7C  
b7D

27 - Million - CAC Bonds  
Issued by Busicorp.  
↑

- IRI - unaware

10-18 Million

CAC - Amount unknown

Jan 87 - aware Front Org Paper Copiers

300,000 + Prop. => unaware as  
to current posses.

196A-48341a1

○ ○ ○ ○ ○ ○



Field File No. LA 196A-4834

Serial # of Originating Document \_\_\_\_\_

OO and File No. LA 196A-4834-142

Date Received 11/10/87

From \_\_\_\_\_

(Name of Contributor)

(Address of Contributor)

(City and State)

By \_\_\_\_\_

(Name of Special Agent)

To Be Returned ☐ Yes ☒ No Receipt Given ☐ Yes ☒ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6(e), Federal Rules of Criminal Procedure ☐ Yes ☒ No

Title: JOHN ELSWORTH  
U.S. Coal Corporation

Reference: \_\_\_\_\_  
(Communication Enclosing Material)

Description: ☐ Original notes re interview of

- ① Supplement and Addendum to Offering Circular, Commercial Acceptance Corp.
2. Collateral Trust Agreement (COMMERCIAL ACCEPTANCE CORP & UNITED SECURITY TRUST)

11-13-87  
B

6.3 *Records.* The Trustee will maintain such current, complete and accurate records and accounts with respect to the Collateral as will enable the Trustee to properly perform the duties of the Trustee hereunder with respect thereto.

## ARTICLE 7

### COVENANTS

7.1 *Accounting; Financial Statements and Other Information.* The Company shall maintain a standard system of accounting established and administered in accordance with generally accepted accounting principles, consistently followed throughout the periods involved, and will set aside on its books, all such proper reserves for each fiscal year for depreciation, obsolescence, amortization, credit and bad debt losses and other purposes as shall be required by such principles. The Company will deliver the following to the Trustee:

(a) As soon as practicable after the end of each fiscal year, and in any event within 120 days thereafter, consolidated balance sheets of the Company as at the end of such fiscal year, and the related consolidated statements of income and of surplus of the Company for such fiscal year, in each case setting forth in comparative form the figures for the previous fiscal year, all in reasonable detail and accompanied by reports and opinions thereon of independent public accountants, which reports and opinions shall state in substance that such financial statements have been substantially prepared in accordance with generally accepted accounting principles consistently applied (except for specified changes in application in which such accountants concur);

(b) Within 120 days after the end of each fiscal year, an Officers Certificate signed by (i) the President or Chairman of the Board of the Company and by (ii) the Secretary, Chief Financial Officer or a Vice-President of the Company, certifying that as of the date of such Officer's Certificate there is, to the best of such officers' knowledge, no Event of Default then existing or specifying the nature and period of existence of any Event of Default then existing;

(c) Promptly upon becoming aware of the existence of any Event of Default, a written notice specifying the nature and period of existence thereof and what action the Company is taking or proposes to take with respect thereto; and

(d) Promptly upon becoming aware that the holder of any Note has given notice or taken any other action with respect to a claimed Event of Default, a written notice specifying the notice given or action taken by such holder and the nature of the claimed Event of Default and what action the Company is taking or proposes to take with respect thereto.

7.2 *Inspection.* The Company will permit any authorized representative of the Trustee to visit and inspect any of the books or other records of the Company which relate to this Agreement or to the transactions contemplated hereby, to make copies and extracts therefrom, and to discuss its affairs, finances and accounts insofar as they relate to this Agreement with its officers, all at such reasonable times, upon reasonable written notice, and as often as may be reasonably requested. The Trustee shall have no duty to make any such inspection, and the Company shall not be relieved of any obligation hereunder by reason of the fact that the Trustee has not made such inspection.

7.3 *Maintenance of Corporate Existence; Merger.* The Company will at all times preserve and keep in full force and effect its corporate existence, rights and franchises; provided that the Company may merge or consolidate with or transfer its assets substantially as an entirety to any other corporation, domestic or foreign, or become a party to any corporate reorganization which would have substantially the same effect, if the successor corporation assumes all of the Company's obligations on the Notes and under this Agreement.

7.4 *Payment of Notes and Maintenance of Office.* The Company will punctually pay or cause to be paid the principal and interest to become due in respect of the Notes according to the terms thereof and will maintain an office in the State of California where notices, presentations and demands in respect of this Agreement or the Notes may be made upon it. Such office shall be maintained at 411 West Seventh Street, Suite 800, Los Angeles, California 90014 until such time as the Company shall notify the Trustee and the holders of the Notes of any change of location of such office.

7.5 *Title Insurance Disputes.* In the event the Trustee shall be the issuer of any policy of title insurance with respect to a deed of trust securing a Pledged Note, and any dispute shall arise between the Company and the Trustee with respect to or arising out of such title insurance policy, then within 90 days after demand by the Trustee, the Company shall, unless such dispute has been resolved, deliver to the Trustee cash for deposit into the Collateral Account and/or additional Pledged Notes, in a total amount sufficient to obtain the release under Section 5.4 of the Pledged Note secured by such deed of trust, and such Pledged Note shall thereupon be released by the Trustee to the Company. Funds delivered by the Company to the Trustee hereunder for deposit into the Collateral Account shall be held and dealt with in the same manner as other funds in the Collateral Account.

7.6 *Covenants Upon Pledged Note Foreclosure Proceedings.* In the event any foreclosure proceedings are commenced by the Company under any deed of trust securing a Pledged Note, the Company shall either: (a) prior to the foreclosure sale, deliver to the Trustee cash for deposit into the Collateral Account and/or additional Pledged Notes, in a total amount sufficient to obtain the release under Section 5.4 of the Pledged Note secured by such deed of trust (which Pledged Note shall thereupon be released by the Trustee to the Company); or (b) bid at such foreclosure sale an amount sufficient to pay in full the entire unpaid principal balance of the Pledged Note secured by the deed of trust being foreclosed, plus all accrued interest thereon, plus all costs, fees and expenses payable to the Trustee under such deed of trust.

7.7 *Covenants Upon Default on Pledged Notes.* If at any time the aggregate unpaid principal balance of the Pledged Notes (other than Non-Qualified Pledged Notes), plus the total amount in the Collateral Account, is less than 90% of the aggregate unpaid principal balance of the Notes issued hereunder, then the Company shall, within 60 days after written demand by the Trustee, deliver to the Trustee cash for deposit into the Collateral Account and/or additional Pledged Notes such that the total of the funds in the Collateral Account plus the aggregate unpaid principal balance of all Pledged Notes (other than Non-Qualified Pledged Notes) is at least equal to 90% of the aggregate unpaid principal balance of the Notes issued hereunder. As used herein, the term "Non-Qualified Pledged Notes" shall mean Pledged Notes on which there is an existing uncured default in the payment of principal and/or interest, which default has existed for a period of 90 days or more.

## ARTICLE 8

### EVENTS OF DEFAULT; REMEDIES

8.1 *Events of Default.* With respect to the Notes issued hereunder the following events or conditions shall constitute "Events of Default" for purposes of this Agreement:

(a) If the Company shall fail to pay any payment of principal or interest on the Notes, when due; or

(b) If the Company shall fail to pay any payment of interest on the Notes when due, and such failure shall continue for 15 days; or

(c) If the Company shall fail to perform or observe any other term of this Agreement and such failure shall continue for more than 60 days after written notice thereof is given to the Company by the Trustee; or

(d) If any material representation, warranty or other statement relating to the Notes, made by or on behalf of the Company and contained herein or in any certificate or other document delivered pursuant hereto, shall prove to have been false or untrue in a material respect, and the same remains uncured for more than 60 days after the date written notice thereof is given to the Company by the Trustee; or

(e) If a receiver, liquidator or trustee of the Company or of all or any substantial part of its property shall be appointed by court order and such order remains in effect for more than 60 days; or the Company shall be adjudicated bankrupt or insolvent; or a petition shall be filed against the Company under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and the same is not dismissed or stayed within 60 days after such filing; or

(f) If the Company shall file a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consent to the filing of any petition against it under any such law; or

(g) If the company shall make an assignment for the benefit of its creditors, or admit in writing its inability to pay its debts generally as they become due, or consent to the appointment of a receiver, trustee or liquidator of the Company or of all or any substantial part of its property.

**8.2 Remedies Upon Default.** If an Event of Default shall occur, the Trustee in its discretion may, and on the written request of holders of a majority in aggregate principal amount of Notes outstanding and upon being indemnified to its satisfaction shall, exercise any right, power or remedy permitted to the Trustee by this Agreement or by law, and shall have, in particular, without limiting the generality of the foregoing, the right to do one or more of the following:

(a) Declare the entire principal amount of the Notes then outstanding to be immediately due and payable, together with interest accrued thereon, all without presentment, demand, protest or notice, all of which are hereby waived;

(b) Proceed to protect and enforce its rights by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any covenant contained herein or for an injunction against a violation of any of the terms of this Agreement or in aid of the exercise of any power granted hereby or thereby or by law;

(c) Exercise all the rights, powers and remedies (whether vested in it by this Agreement or by law or otherwise) for the protection and enforcement of its rights in respect of the Collateral, including without limitation the rights, powers and remedies of a secured party under the Uniform Commercial Code.

The Trustee may waive any Event of Default, without the consent of the holders of the Notes, provided no declaration has been made pursuant to clause (a) of this Section 8.2, and provided such Event of Default has been cured. If a declaration is made pursuant to clause (a) of this Section 8.2, then and in every such case the holders of a majority in aggregate principal amount of the Notes then outstanding may, by written instrument filed with the Trustee and the Company, rescind and annul such declaration, and the consequences thereof, if at the times such declaration is annulled and rescinded: (A) no judgment or decree has been entered for the payment of any moneys due pursuant to the Notes; (B) all arrears of interest upon the Notes and all other sums payable under the Notes (except any principal or interest on the Notes which has become due and payable by reason of such declaration) shall have been duly paid; (C) each and every other Event of Default with respect to the Notes shall have been waived pursuant to Section 10.1 or otherwise made good or cured, and (D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel have been paid, and provided further that no such rescission and annulment shall extend to or affect any subsequent Event of Default with respect to the Notes or impair any right or consequence thereon.

**8.3 No Waiver.** No course of dealing on the part of the Trustee or any holder of the Notes or any delay or failure on the part of the Trustee or any holder of the Notes to exercise any right shall operate as a waiver of such right or otherwise prejudice the Trustee or such holder's rights, powers and remedies.

**8.4 Costs.** In the event of any litigation between the Company and the holders of the Notes based upon a claimed or alleged Event of Default, the non-prevailing party shall pay to the prevailing party, to the extent permitted by law, such amounts as shall be sufficient to cover the costs and expenses, including but not limited to reasonable attorneys' fees, incurred by such prevailing party in connection therewith.

**8.5 Application of Proceeds of Sale; Disposition of Other Funds.** The proceeds of any foreclosure, sale or other disposition of or other realization upon the Collateral and all monies received in connection herewith, and any other monies at any time held by the Trustee for which no other disposition is provided in this Agreement shall be applied as follows:

or registration of transfer, and upon such sale, exchange, presentation, collection, renewal or transfer, such escrow or attorney shall deliver to the Trustee any and all proceeds thereof in the form received.

**5.6 Rights of the Company With Respect to the Collateral.** Provided no Event of Default, which remains uncured, exists with respect to the Notes issued hereunder, the Company shall have the right to compromise, amend, modify, renew, change the rate of interest on, extend the time for payment or performance of, waive defaults under, and otherwise deal as owner with the Pledged Notes, the Pledged Note Guarantees, and the Pledged Note Security Documents, and to release any parties thereto or collateral therefor, and on request of the Company the Trustee shall execute and deliver all such documents and instruments take all such actions as may be requested by the Company in order to effectuate the same; provided, however, that in no event shall the Company (i) cancel any unpaid principal balance of the Pledge Notes unless concurrently the Company shall pay to the Trustee an amount equal to the unpaid principal balance of the Pledged Notes being cancelled, which sum shall be deposited in the Collateral Account, (ii) release any real or personal property serving as collateral for any Pledged Notes, unless the Company shall deliver to the Trustee an Officer's Certificate stating that in the good faith judgment of the Company the liquidation value of the remaining collateral (and any additional collateral obtained concurrently therewith) is at least equal to 100% of the then unpaid principal balance of the Pledged Note secured thereby, and (iii) release any party thereto unless the Company shall deliver to the Trustee an Officer's Certificate stating that in the good faith judgment of the Company the credit-worthiness of the remaining parties (and any additional parties added concurrently therewith) is adequate in light of the unpaid balance of the Pledged Note, the collateral securing the same, and such other facts and circumstances as the Company deems relevant. In the event of any material compromise, amendment, modification, renewal, change in interest rate, extension or waiver with respect to any Pledged Notes, Pledged Note Security Documents or Pledged Note Guarantees, the Company shall promptly give written notice thereof to the Trustee and shall deliver to the Trustee original copies of all documents and instruments executed in connection therewith.

**5.7 Collection of Pledged Notes.** The Company shall have the sole obligation to collect the Pledged Notes and enforce all rights and remedies in respect of the Collateral, and on request of the Company the Trustee shall execute and deliver such documents and instruments (including without limitation, the release and reassignment of Collateral) and take such actions as may be requested by the Company in order to effectuate the same. The Trustee shall have no responsibility with regard to any of the foregoing obligations of the Company, and the Company shall indemnify and hold the Trustee harmless with respect thereto. The Company shall direct the makers of the Pledged Notes to make all payments of principal, interest and prepayment fees (if any) on the Pledged Notes by check made payable to the order of the Trustee and to send such check to the Company. All such payments of principal, interest and prepayment fees collected by the Company shall be remitted by the Company to the Trustee, in the form received. All principal payments on the Pledged Notes shall be credited to the Collateral Account, and all interest payments and prepayment fees (if any) shall be credited to the Interest Account. All other sums collected with respect to Pledged Notes, Pledged Note Guarantees and Pledged Note Security Documents, including without limitation attorneys' fees, costs, expenses, and late charges shall be paid to and retained by the Company, and in the event any payments made to the Trustee include any such sums, as shown by an Officer's Certificate, such sums shall be paid by the Trustee to the Company.

## ARTICLE 6

### ADMINISTRATION OF COLLATERAL BY TRUSTEE

**6.1 Receipt and Custody of Collateral.** The Trustee shall receive, and retain custody of, the Pledged Notes, the Pledged Note Guarantees, and the Pledged Note Security Documents in accordance with the terms of this Agreement.

**6.2 Additional Documents.** The Company will deliver or cause to be delivered to the Trustee all such additional records and certificates and other instruments as shall be necessary or appropriate in order for the Trustee to maintain current, complete and accurate records concerning the Pledged Notes, the Pledged Note Guarantees, and the Pledged Note Security Documents so as to enable the Trustee to perform all of the duties of the Trustee hereunder with respect to the Collateral.

5.2 *Perfection of Security Interest.* (a) The Company will cause deeds of trust and financing statements (including any necessary continuation statements) with respect to the real and personal property security interests created by the Pledged Note Security Documents to be at all times filed and recorded, as the case may be, in such manner and in such places as may be required by law in order fully to preserve and protect the rights of the Trustee and the holders of the Notes hereunder and to perfect such security interests.

(b) The Company represents and warrants that its chief executive office is located in the State of California, and in the event that the Company changes the location of its chief executive office, the Company will forthwith notify the Trustee of the new location and will make such additional filings under the Uniform Commercial Code or other applicable law as may be necessary to assure compliance with this Section 5.2. The Company consents to the filing by the Trustee of any financing statement or continuation statement (which, at the sole option of the Trustee, need not be signed by the Company) in any place and at any time that the Trustee deems the filing thereof necessary in order to assure compliance with this Section 5.2.

(c) The Company shall pay the costs of any filings pursuant to this Section 5.2 deemed necessary or appropriate by the Trustee.

5.3 *Compliance with Pledged Note Security Documents.* The Company will duly perform and comply with all of the terms of the Pledged Note Security Documents to be performed or complied with by it and will take all such action to that end as from time to time may be requested by the Trustee. If the maker or other party to any of the Pledged Notes, the Pledged Note Guarantees, or Pledged Note Security Documents shall fail to perform any material act required to be performed by it thereunder and such failure continues for 60 days after the date the Company first obtains actual knowledge of such failure, the Company shall give notice of such failure to the Trustee promptly after the expiration of such 60-day period. The Company shall furnish to the Trustee, promptly upon receipt thereof, copies of all material notices, demands and other communications that the Company may receive from any other party to any of the Pledged Notes, the Pledged Note Guarantees, or Pledged Note Security Documents, which in the good faith judgment of the Company will materially and adversely affect the interests of the Trustee therein.

5.4 *Release of Collateral.* In the event of any payment or prepayment in full of the entire unpaid principal amount of and all interest accrued on, any of the Pledged Notes, upon the written request of the Company, the Trustee shall release from the lien of this Agreement said Pledged Notes and the Pledged Note Guarantees and the Pledged Note Security Documents related thereto held by it and shall execute such requests for reconveyance, termination statements, and other documents and instruments with respect thereto as the Company may request, all of which shall be prepared by the Company at its expense. In the event the Company advises the Trustee in writing that the entire unpaid principal amount of and all accrued interest on any of Pledged Notes is to be paid through an escrow or an attorney designated by the Company, said Pledged Notes and the Pledged Note Guarantees and Pledged Note Security Documents relating thereto, and said termination statements, requests for reconveyance and other documents and instruments shall be delivered by the Trustee to said escrow or attorney against payment of said unpaid principal amount and accrued interest. In the event at any time the unpaid principal balance of the Notes is less than the total of the funds in the Collateral Account plus the aggregate unpaid principal balance of the Pledged Notes, as shown in an Officer's Certificate delivered by the Company to the Trustee, the Trustee shall release to the Company, at the Company's option, funds from the Collateral Account and/or Pledged Notes selected by the Company in an unpaid principal amount such that the total of the funds remaining in the Collateral Account plus the unpaid principal balance of the remaining Pledged Notes will be not less than the unpaid principal balance of the Notes. With respect to any Pledged Notes so released, the Trustee shall deliver and assign to the Company the Pledged Notes and the related Pledged Note Guarantees and Pledged Note Security Documents without recourse, representation or warranty. Notwithstanding the release of all or any portion of such Collateral, the obligations of the Company to the Trustee under Section 9.3 hereof shall survive.

5.5 *Temporary Release of Pledge Notes.* Upon the written request of the Company, the Trustee shall deliver to such escrow or attorney as the Company shall designate such Pledge Notes, Pledge Note Guarantees, and Pledge Note Security Documents as the Company shall request, to be held by such escrow or attorney on behalf of the Trustee for purposes of the ultimate sale or exchange thereof or of presentation, collection, renewal

First: To the payment to the Trustee for any fees, expenses, costs or liabilities incurred for which the Trustee is entitled to payment, reimbursement or indemnity from the Company and for which the Trustee has not been paid or reimbursed from any other source;

Second: To pay the costs and expenses of the sale or other disposition (including without limitation reasonable attorneys' fees incurred in connection therewith), and any taxes, assessments or other charges, prior to any lien or pledge created under or pursuant to this Agreement, which the Trustee may consider it necessary or desirable to pay;

Third: To the payment of accrued interest and principal due on the Notes, pro rata;

Fourth: To the payment of principal on the Notes, pro rata;

Fifth: The balance, if any, shall be paid to the Company.

If the said proceeds are not sufficient to enable the Trustee to make the payments provided for in paragraphs First, Second, Third and Fourth above, the Company shall remain liable for the deficiency.

If the said proceeds are not sufficient to enable the Trustee to make the payments provided for in paragraphs First, Second, Third and Fourth above, the Company shall remain liable for the deficiency

8.6 *Right of Trustee to Perform Covenants.* If the Company shall fail to make any payment or perform any act required to be made or performed hereunder, the Trustee, upon ten days written notice to the Company and without waiving or releasing any obligation or Event of Default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of the Company. All sums so paid by the Trustee and all costs and expenses (including, without limitation, reasonable attorneys' fees) so incurred, together with interest thereon at the rate of 10% per annum, from the date of payment, shall constitute additional indebtedness secured by this Agreement and shall be paid by the Company to the Trustee on demand.

8.7 *Remedies Cumulative.* Each right, power and remedy of the Trustee provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement or now or hereafter existing in any other instrument or agreement, at law or in equity or by statute or otherwise, and the exercise by the Trustee of any one or more of the rights, powers or remedies provided for in this Agreement now or hereafter existing in any other instrument or agreement, at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the Trustee of any or all such other rights, powers or remedies. Without limiting the generality of the foregoing, the Trustee may act to foreclose any lien created under or pursuant to this Agreement or may exercise any one or more of the other rights, powers or remedies of the Trustee provided for in this Agreement, all at the same time or at different times and in any order, as the Trustee may elect, and any such foreclosure or exercise by the Trustee shall not be a bar to, or prejudice in any manner or otherwise affect, any other such foreclosure or exercise, so long as any part of the principal of, or interest on the Notes at the time outstanding or any other sums secured pursuant to this Agreement shall remain unpaid.

8.8 *No Waiver.* No failure by the Trustee or of any holders of any of the Notes to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon any breach hereof shall constitute a waiver of any such term or of any such breach. No waiver of any breach shall affect or alter this Agreement, which shall continue in full force and effect with respect to any other then existing or subsequent breach.

8.9 *Trustee May File Proofs of Claim.* In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or the property of the Company, the Trustee (irrespective of whether the principal of the then outstanding Notes shall then be due and payable as therein expressed or by declaration in accordance with Section 8.2 hereof, or otherwise) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim for the whole amount of principal and interest owing and unpaid in respect of the then outstanding Notes and to file such other papers or documents as may be necessary

or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the holders of the then outstanding Notes allowed in such proceeding, and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such proceeding is hereby authorized by each holder of any Note to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the holders, and to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 9.3 hereof. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt, on behalf of any holder of any Note, any plan of reorganization, arrangement, adjustment or composition affecting the then outstanding Notes or the rights of any holder thereof, or to authorize the Trustee to vote in respect of the claim of any holder thereof in any such proceeding.

8.10 *Trustee May Enforce Claims Without Possession of Notes.* All rights of action and claims under this Agreement or the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensations, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of, the holders of the then outstanding Notes in respect of which such judgment has been recovered.

8.11 *Limitation on Suits.* No holder of any Note shall have any right to enforce, or institute any proceeding, judicial or otherwise with respect to, the Notes or this Agreement or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(a) such holder has previously given written notice to the Trustee of a continuing Event of Default; and

(b) the holders of a majority in principal amount of the outstanding Notes shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder; and

(c) such holder or holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; and

(d) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and

(e) no direction inconsistent with such written request has been given to the Trustee during such 60 day period by the holders of a majority in principal amount of the outstanding Notes;

it being understood and intended that no one or more holders of any Notes shall have any rights in any manner whatever by virtue of any provision of this Agreement to affect, disturb or prejudice the rights of any other holders of any Notes, or to obtain or to seek to obtain priority or preference over any other holders of any Notes or to enforce any right under this Agreement, except in the manner herein provided and for the ratable benefit of all the holders of all outstanding Notes.

## ARTICLE 9

### THE TRUSTEE

9.1 *Duties of Trustee to Enforce Agreement.* The Trustee, for the pro rata benefit of the holders of all the Notes from time to time outstanding, will from time to time take such action for the protection and enforcement of their rights under this Agreement as may be necessary or appropriate in the interests of the holders of the Notes, provided that:

deliver to the Trustee a form of Uniform Commercial Code Assignment executed to the Company as Secured Party in favor of the Trustee as the Assignee of Secured Party with respect to the Financing Statement shown in the Schedule.

4.5 *Payment of Principal on Notes.* On the date the principal of the Notes is due, the Trustee shall make such payment out of funds in the Collateral Account. In the event the funds in the Collateral Account are insufficient to make such payment, the Company shall promptly cure the deficiency. In the event the Company elects to make a prepayment of principal or interest on any Note pursuant to Section 3.1, with the consent of the Note holder, the Trustee shall make such prepayments out of funds in the Collateral Account and Interest Account, respectively, upon receipt of written instructions from the Company to do so.

4.6 *Limited Duty of Trustee.* The Trustee shall not have any duty to examine, ascertain or investigate the validity, authenticity, accuracy, due execution or delivery of any of the Pledged Notes, Pledged Note Guarantees, or Pledged Note Security Documents, nor the binding effect or enforceability of any of the same or any of the provisions of the same, nor any responsibility or duty with respect to the perfection or maintenance of any security interest granted pursuant thereto, and the Trustee shall, in all respects, be entitled to rely on the truth and accuracy of the representations and warranties made by the Company pertaining or related to the Pledged Notes, the Pledged Note Guarantees, and the Pledged Note Security Documents, whether made by the Company in the Schedule or otherwise. The Trustee shall have no duty whatsoever to investigate or inquire into the real property or other assets securing the Pledged Notes, or the value thereof, or any insurance covering the same (including without limitation any title insurance provided by the Trustee or any affiliated company, or any other matter pertaining thereto).

## ARTICLE 5

### THE COLLATERAL

5.1 *Warranties as to Collateral.* With respect to all collateral the Company represents and warrants as follows:

(a) At the time of the delivery of the same to the Trustee, the Pledged Notes, Pledged Note Guarantees, and Pledged Note Security Documents will have been duly authorized, executed and delivered by or on behalf of the parties thereto and will constitute the legal, valid and binding obligations of the parties thereto, and, at the time of the delivery of the same to the Trustee, there will have been no waiver, amendment or modification of any of the terms thereof.

(b) The Company will, at the time of the delivery of the same to the Trustee, have good title to the Pledged Notes and a valid encumbrance on the collateral described in the Pledged Note Security Documents, and the Pledged Notes.

(c) At the time of the delivery of the same to the Trustee, there will have been no prepayment or discount of the outstanding principal balance of the Pledged Notes, except as shown on the Schedules pertaining thereto, there will exist no right of setoff, recoupment, counterclaim or defense against the payment of the Pledged Notes, and the Company will have no knowledge of any facts or circumstances which would materially impair the value to the Trustee of the Pledged Notes, the Pledged Note Guarantees, or the Pledged Note Security Documents.

(d) At the time of the delivery of the same to the Trustee, the Company will have the full and unqualified power and authority to assign and deposit with the Trustee the Pledged Notes, the Pledged Note Guarantees, and the Pledged Note Security Documents.

(e) The Company will have no knowledge of any material default or event of default under the Pledged Notes, the Pledged Note Guarantees or the Pledged Note Security Documents, at the time of the delivery of the same to the Trustee.



4.2 *Authentication of Notes.* No Note shall be entitled to the security afforded by this Agreement, as it may be supplemented and amended from time to time, unless such Note has been duly authenticated by the Trustee by its execution of a certificate in the form set forth in the form of Note. No such Note shall be authenticated by the Trustee unless the conditions specified in this Article 4 have been satisfied. Each Note issued hereunder shall be dated and authenticated as of the date of its issue ("Authentication Date").

4.3 *Conditions to Authentication.* No Notes shall be authenticated by the Trustee unless the Trustee shall have received the following: A Company Request, specifying the Authentication Date and the principal amount of the Notes to be authenticated by the Trustee pursuant to this Agreement, together with Subscription Funds in an amount equal to the principal amount of the Notes to be authenticated. No Notes may be authenticated by the Trustee hereunder if the Trustee has received written notice from the Company that an Event of Default as defined in Section 8.1, exists on the Authentication Date.

4.4 *Release of Funds from Collateral Account.* The Trustee shall, from time to time, release to the Company or such escrow holder (if such release to an escrow holder is prior to delivery of the items described in Paragraphs 4.4(a) through (f) hereof, then only if the Trustee is a party to the escrow), title company or other fiduciary, as Company shall designate in writing, from the Collateral Account such amounts as the Company shall specify, upon delivery to the Trustee of the following:

(a) *Schedules and Assignments.* One or more Schedules and Assignments of Pledged Notes, Pledged Note Guarantees, and Pledged Note Security Documents, substantially in the form of Exhibit 1 hereto, on which the aggregate unpaid principal balance of the Pledged Notes, as such unpaid principal balance is shown on such Schedules is not less than the amount to be released to the Company from the Collateral Account. This condition shall be satisfied, if there is an interim lender or other person (the "Interim Lender") to which the Pledged Notes, Pledged Note Guarantees, and Pledged Note Security Documents have previously been assigned, by the due execution and delivery of an assignment thereof by the Company to the Interim Lender and the subsequent assignment of the same (without recourse, representation or warranty) by the Interim Lender to the Trustee or the Company.

(b) *Pledged Notes, Pledged Note Guarantees, and Pledged Note Security Documents.* The original copies of all Pledged Notes, Pledged Note Guarantees (if any) and Pledged Note Security Documents identified in the Schedule delivered to the Trustee; provided, however that the Company may deliver to the Trustee a conformed copy of any Deed of Trust or Mortgage identified in the Schedule in lieu of the original thereof. The Company covenants that promptly upon the return of any such Deed of Trust or Mortgage to the Company by the applicable recording office, the Company will deliver the same to the Trustee.

(c) *Assignment of Deed of Trust.* A conformed copy of an Assignment of Deed of Trust or Mortgage, with respect to any Deed of Trust or Mortgage identified in the Schedule, executed by the Company in favor of the Trustee, showing the recording of the same in the office of the County Recorder identified in the Schedule. The Company covenants that promptly upon the return of any such Assignment of Deed of Trust or Mortgage to the Company by the applicable recording office, the Company will deliver the same to the Trustee.

(d) *Title Insurance Commitment.* A copy of a commitment to issue title insurance with respect to any real property subject to any Deed of Trust or Mortgage delivered pursuant to subparagraph (b) above. The Company covenants that, promptly upon receipt of the title insurance policy issued pursuant thereto, it will deliver the same to the Trustee. Said title insurance commitment and title insurance policy may be issued by the Trustee.

(e) *Financing Statement.* A copy of any and all Uniform Commercial Code Financing Statements shown on such Schedule, stamped to show the filing of the same in the governmental office identified in the Schedule.

(f) *Assignment of Financing Statement.* In the event any Financing Statement delivered by the Company to the Trustee pursuant to Paragraph 4.4(e) above does not show the Trustee as the assignee of the secured party, the Company shall, concurrently with the delivery of the Schedule to the Trustee, also

(a) Unless and until an Event of Default shall have occurred and be continuing, the Trustee shall not be obligated to take any action hereunder except for the performance of such duties as are specifically set forth herein and no implied covenants or obligations shall be read into this Agreement against the Trustee;

(b) The Trustee, in the absence of actual knowledge, shall not be deemed to have knowledge of the existence of any Event of Default unless notified in writing by the Company or any holder of any of the Notes at the time outstanding;

(c) In case an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Agreement, and shall use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs;

(d) Unless an Event of Default shall have occurred and be continuing, the Trustee may conclusively rely in good faith, as to the truth of the statements and the correctness of opinions expressed therein, upon certificates or opinions furnished to the Trustee by the Company or others and conforming to the requirements of or contemplated by this Agreement;

(e) The Trustee shall not be liable to any holder of Notes or to any other person for any error of judgment made in good faith by a responsible officer or officers of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(f) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of a majority in principal amount of the Notes at the time outstanding, relating to the time, method or place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Agreement; and

(g) No provision of this Agreement shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights and powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

9.2 *Concerning the Trustee.* The Trustee hereby accepts the trusts of this Agreement for the pro rata benefit of the holders of all of the Notes from time to time outstanding, but only upon the terms herein set forth, including the following:

(a) The Trustee makes no representation as to the value, genuineness or condition of the Collateral or any part thereof, or as to the title of the Company thereto or as to the security afforded thereby or hereby. The Trustee makes no representation or warranty as to the validity, sufficiency, legality or enforceability of this Agreement, the Notes or the Collateral, or as to the correctness of any statement or recital contained in any thereof.

(b) The Trustee shall be under no responsibility or duty with respect to the application of the proceeds of any of the Notes or of any monies paid to the Company, or upon Company order under any of the provisions thereof.

(c) The Trustee may execute any of the trusts or powers hereof and perform any duty hereunder either directly or through its agents or attorneys.

(d) The Trustee may consult with legal counsel selected by it in connection with the subject matter of this Agreement (who may be an employee of or counsel to the Company), and shall not be liable for any action taken or omitted by it in good faith in accordance with the advice of such counsel.

(e) The Company will indemnify the Trustee for, and hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of this Agreement, including, but not limited to, the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its

powers or duties hereunder, and any loss, liability, expense or claim, arising out of its possession or control of the Collateral and not based on its negligence or bad faith;

(f) The Company shall not be personally liable for reasonable expenses or liabilities or damages incurred in connection with the enforcement of any of the rights, remedies, powers or other interests of the Trustee in, to and under the Collateral;

(g) The Trustee, except as provided in this Agreement, shall not be under any duty to take any action to perfect or preserve unimpaired the obligation of any party primarily or secondarily liable on any of the Collateral;

(h) The Trustee assumes no obligation or liability under any of the Collateral by reason of its being party to or assignee of any thereof, and shall not be required to perform any obligation of any other party to or any assignor of any of the Collateral;

(i) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it or in the holders of the Notes by this Agreement, at the request or direction of any of the holders of Notes pursuant to this Agreement, unless such holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(j) Upon making any payment in respect of any Note or in taking any other action hereunder, the Trustee may rely upon the books for the registration of the Notes and their transfer maintained pursuant to Section 2.6 and shall be protected in making any payment in respect of any Note reasonably believed by the Trustee to be genuine;

(k) The Trustee shall be under no duty or responsibility to see to the insurance in respect of property securing the Pledged Notes or to effect or maintain such insurance;

(l) The Trustee may rely upon and shall be protected in acting or refraining from acting in reliance upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, Note or other paper or document believed by it to be genuine and to have been signed or presented by the proper person or persons;

(m) Whenever in the administration of this Agreement the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon a certificate signed by an officer of the Company ("Officer's Certificate");

(n) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, Note or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit; and

(o) The actual or constructive knowledge of the Trustee or its affiliates, including subsidiaries, or of any of its or their departments or divisions, including, but not limited to, the Escrow Division and Title Insurance Division, but excluding the Corporate Trust Division, shall not be deemed to be the actual or constructive knowledge of the Trustee;

**9.3 Trustee's Compensation and Expenses.** The Company shall pay the Trustee reasonable compensation for its services hereunder in such amounts as the Company and the Trustee may from time to time agree, and will pay or reimburse the Trustee for all its reasonable expenses and disbursements hereunder, including, without limitation, the reasonable fees and disbursements of its counsel (who may be an employee of the Trustee) and its agents not regularly in its employ.

**9.4 Resignation, Removal and Replacement of Trustee.** The Trustee may resign at any time by giving 90 days prior written notice of resignation to the Company and to each holder of a Note, such resignation to be effective on the date specified in such notice. The holders of a majority in principal amount of the Notes at the

of like tenor, dated the Authentication Date. Every new Note issued pursuant to this Section 2.7 in lieu of any destroyed, lost or stolen Note shall constitute an original additional contractual obligation hereunder, whether or not the destroyed, lost or stolen Note shall be at any time enforceable by anyone, and each such new Note shall be entitled to all the security and benefits of the Note so destroyed, lost or stolen, equally and proportionately with any and all other Notes duly issued hereunder.

### ARTICLE 3

#### PAYMENT OF PRINCIPAL AND INTEREST ON THE NOTES

**3.1 Principal Repayments.** Principal of any Note may be prepaid by the Company in whole or in part without the consent of the holder thereof.

**3.2 Interest Account.** All interest payments received by the Company with respect to any Pledged Notes shall be remitted by the Company to the Trustee in the form received and shall be credited to an account maintained by the Trustee (the "Interest Account"). On each Interest Payment Date, all funds then in the Interest Account shall be applied by the Trustee to the interest accrued on the Notes through said Interest Payment Date as set forth in the Series Designation. In the event the funds in the Interest Account on an Interest Payment Date are less than the interest accrued on the Notes through such Interest Payment Date, the Company shall immediately pay to the Trustee an amount sufficient to cure the deficiency. In the event the funds in the Interest Account on an Interest Payment Date exceed the interest on the Notes accrued through such Interest Payment Date, the Trustee shall pay the excess amount to the Company. Funds in the Interest Account shall be invested by the Trustee in short term government obligations, short term certificates of deposit issued by a bank with an office in \_\_\_\_\_, having combined capital and surplus of not less than \$5,000,000, federal funds, AAA rated commercial paper, pooled funds of debt securities and/or bank repurchase agreements, as selected by the Company, and all income earned thereon shall be credited to the Interest Account.

**3.3 Payment Responsibility.** The Company shall be responsible to see that the Trustee has sufficient funds available to make all principal and interest payments as they come due on the Notes. The Trustee shall have no responsibility with respect thereto except to make such principal and interest payments on the Notes from funds in the Collateral Account hereinafter referred to, and the Interest Account, and from funds provided it by the Company. The Trustee shall not be liable with respect to any of the obligations under the Notes and the Company shall indemnify and hold harmless the Trustee with respect thereto.

### ARTICLE 4

#### AUTHENTICATION OF NOTES BY TRUSTEE

**4.1 Deposit of Subscription Funds; Collateral Account.** Funds representing the purchase price of the Notes ("Subscription Funds") received by the Company from persons whose subscriptions have been accepted shall be delivered by the Company, in the form received, to the Trustee. Any checks representing Subscription Funds shall be made payable to the order of the Trustee. The Company shall direct persons subscribing for Notes to submit their Subscription Agreements and Subscription Funds to the Company for transmittal to the Trustee upon acceptance thereof by the Company. Subscription Funds received by the Trustee shall be deposited in an account maintained by the Trustee (the "Collateral Account") and held and dealt with as provided in this Agreement. The Trustee shall invest the funds in the Collateral Account in short term government obligations, short term certificates of deposit issued by a bank with an office in \_\_\_\_\_, having combined capital and surplus of not less than \$5,000,000, federal funds, AAA rated commercial paper, pooled funds of debt securities and/or bank repurchase agreements, as selected by the Company. All income earned on funds in the Collateral Account shall be credited to the Interest Account. The Trustee shall have no responsibility with respect to losses incurred in the Collateral Account or the Interest Account.

series ("Series") which shall be specific as to the maturity date and interest rate of any Note issued within a Series. By a written instrument (the "Series Designation") in standard form executed by the Company and the Trustee each Series of Notes shall automatically become subject to the terms and conditions of this Agreement, as amended from time to time with such additional provisions or conditions as the Company and the Trustee shall agree to in writing. Notes may be issued in one or more Series concurrently as determined by the Company. All of the provisions of each Series Designation upon execution by the Company and the Trustee shall be deemed incorporated in this Agreement as if set forth in full herein. To the extent the provisions of a Series Designation conflicts with the provisions of this Agreement such provisions of a Series Designation shall control only with respect to the particular Series.

**2.3 Payment of Interest.** Payment of interest on each Series of Notes shall be paid and/or accrued as set forth in the Series Designation. Each Series Designation shall set forth the date on which payments of interest shall be made ("Interest Payment Date").

**2.4 Form of Notes.** The Form of Notes shall be attached as an exhibit to the Series Designation prepared by the Company and delivered to the Trustee for execution.

**2.5 Authentication of Notes; Date.** The Notes, when executed by the Company, shall be delivered to the Trustee for authentication by it and the Trustee shall authenticate such Notes only as provided in this Agreement. Each Note shall be dated and authenticated in accordance with Article 4 hereof as of the date of its issuance ("Authentication Date"). Each Note originally issued hereunder shall bear interest from its Authentication Date. Each Note issued upon transfer or exchange of any Note pursuant to Section 2.6 or in substitution for any Note pursuant to Section 2.7 shall bear interest as set forth in the Series Designation.

**2.6 Registration, Transfer and Exchange of Notes; Record Date.** The Company will keep or cause to be kept, at the principal corporate trust office of the Trustee, a register or registers in which the names and addresses of all holders of the Notes shall be registered and in which transfer of the Notes may be registered. On due presentment of any Note for registration of transfer in such office, or upon surrender of any Note for exchange at such office, the Company, upon the payment of any tax or other governmental charge by the holder, shall issue in exchange therefor, and the Trustee will authenticate, a new Note or Notes, in such denomination or denominations as may be requested and as may be approved by the Company which aggregate the unpaid principal amount of the presented or surrendered Note, and otherwise of like tenor; provided, however, that in no event shall the Company have any obligation to register transfer of any Notes unless the restrictions set forth on the form of the Notes, are complied with. Prior to authentication by the Trustee the Company shall deliver to the Trustee a certificate, certifying that such restrictions have been complied with to its satisfaction, together with a copy of any opinion of counsel received by the Company in connection with the transfer. Every Note presented or surrendered for registration of transfer or exchange shall be endorsed by, or be accompanied by a written instrument of transfer in form satisfactory to the Trustee duly executed by the holder thereof or his attorney duly authorized in writing. Prior to the due presentment of any Note for registration of transfer, the Company and the Trustee may treat the registered holder thereof as the absolute owner thereof for the purpose of receiving all payments of principal and interest thereon, and for all other purposes thereof and of this Agreement, and neither the Trustee nor the Company shall be affected by notice to the contrary. All interest payments shall be made to the holders of Notes of record at the close of business on the Record Date (as hereinafter defined) for such Interest Payment Date, notwithstanding the fact that such Note may have been presented for registration of transfer and transferred after such Record Date. The term "Record Date" as used in this Agreement with respect to any Interest Payment Date shall mean the fifteenth day of the calendar month in which such Interest Payment Date occurs.

**2.7 Replacement of Notes.** Upon receipt of evidence reasonably satisfactory to the Company and the Trustee of the loss, theft, destruction or mutilation of any Note, and, in the case of any loss, theft or destruction of such Note, upon delivery of an indemnity agreement reasonably satisfactory to them (provided that if the registered holder of the Note is a bank or an insurance company, its own agreement of indemnity shall be deemed to be satisfactory) and in the absence of notice to the Trustee that such Note has been acquired by a bona fide purchaser, or, in the case of mutilation, upon surrender of such Note for cancellation at the office maintained pursuant to Section 7.4, and upon the payment of transfer taxes if any, by the holder of the Note, the Company at its expense will execute and deliver in lieu thereof, and the Trustee will authenticate, a new Note

time outstanding may at any time remove the Trustee, for or without cause, by an instrument or instruments in writing delivered to the Trustee and the Company. In case the office of Trustee shall become vacant for any reason, the holders of a majority in principal amount of the Notes at the time outstanding may appoint a successor Trustee by an instrument or instruments in writing delivered to such successor Trustee, the retiring Trustee and the Company, whereupon such successor Trustee shall succeed to all the rights and obligations of the retiring Trustee hereunder as if originally named herein. In the event the Trustee shall voluntarily resign, unless the holders of a majority in principal amount of the Notes outstanding object and appoint their own successor Trustee, the Company may appoint a successor Trustee which is unaffiliated with the Company (acting as Trustee on behalf of any other Note holders with respect to any other promissory notes issued by the Company shall not be deemed to cause such Trustee to be affiliated) and which is a bank, savings and loan association, insurance Company, title insurer or trust Company by an instrument or instruments in writing delivered to such Trustee, the retiring Trustee and each Note holder, whereupon each successor Trustee shall succeed to all the rights and obligations of the retiring Trustee hereunder as if originally named herein. Any retiring Trustee, at the expense of the Company, shall duly assign, transfer and deliver to its successor Trustee all the rights and moneys at the time held by the retiring Trustee hereunder and shall execute and deliver such proper instruments as may be reasonably requested to evidence such assignment, transfer and delivery, provided, however, that the Trustee shall be entitled to refuse to transfer the Trust assets to a successor selected by the holders of a majority in principal amount of the Notes if the Trustee believes, in good faith, that the person selected by the holders of the Notes is prohibited from acting as Trustee of the Trust under any state or federal law or regulation, and no person selected by the holders of the Notes as successor Trustee shall be a successor Trustee until Trust property has been transferred to that person in accordance with this paragraph. If in a proper case no appointment of a successor Trustee shall be made pursuant to the provisions of this Section 9.4 within 60 days after a vacancy shall have occurred in the office of the Trustee, the Company or the holder of any Note may apply to any court of competent jurisdiction to appoint a successor Trustee, and such court may thereupon, after such notice, if any, as it may consider proper, appoint a successor Trustee eligible, as provided in Section 9.9. With the approval of the Company, a successor Trustee may accept the account rendered and the property delivered to it by a retiring Trustee without incurring any liability or responsibility for so doing.

**9.5 Successor Corporate Trustee by Merger, Conversion, Consolidation.** Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Trustee is a party, or any state or national bank or trust company in any manner succeeding to all or substantially all of the corporate trust business of the Trustee, shall automatically succeed to all of the rights and obligations of the Trustee hereunder without further action on the part of any of the parties hereto.

**9.6 Appointment of Separate or Co-Trustee.** The Trustee may, and upon the request of the holders of a majority in principal amount of the Notes outstanding, the Trustee shall, by an instrument in writing delivered to the Company and each holder of the Notes, appoint a bank or trust company or an individual to act as separate trustee or co-trustee with respect to all or any part of the Collateral in a jurisdiction where the Trustee is disqualified from acting or for any other purpose deemed by the Trustee or such holders to be advantageous to their respective interests, such separate trustee or co-trustee to exercise only such rights and to have only such duties as shall be specified in the instrument of appointment. The Company shall pay the reasonable compensation and expenses of any such separate trustee or co-trustee and, if requested by the Trustee, such separate trustee or co-trustee or the holders of a majority in principal amount of the Notes at the time outstanding, will enter into a Supplemental Collateral Trust Agreement, satisfactory in substance and form to the Trustee, such separate trustee or co-trustee or such holders, confirming the rights and duties of such separate trustee or co-trustee. The Trustee shall not be liable in any way for the acts or omissions of any such separate trustee or co-trustee, and the Company shall indemnify and hold harmless the Trustee from any loss, liability or expense which it may incur by reason of the acts or omissions of such separate or co-trustee.

**9.7 Payments by Trustee to Holders of Notes.** Payments of principal of and interest on the Notes shall be made by the Trustee to the holders of the Notes by mailing a check payable in lawful money of the United States of America to such holder at its address appearing in the records for registration of the Notes or at such other address as may be specified in a written notice from such holder to the Trustee. Payment of the principal of, and



interest on any Note may be made by the Trustee to the holder thereof without presentation or surrender thereof to the Trustee. Upon any payment or prepayment of principal of a Note in whole or in part, the holder of such Note shall deliver such Note to the Trustee for notation thereon of the portion of the principal so prepaid. In case the entire principal amount of any Note is paid, such Note shall be surrendered to the Company for cancellation and shall not be reissued, and no Note shall be issued in lieu thereof.

9.8. *Notices of Events of Default.* Within 90 days after obtaining knowledge of an Event of Default hereunder, the Trustee will transmit by mail notice of such Event of Default to all the holders of the Notes as their names and addresses appear in the Note register, unless such Event of Default shall have been cured or waived; provided, however, that except in the case of a default in the payment of principal or interest on any of the Notes, the Trustee shall be protected in withholding such notice if it determines in good faith that the withholding of such notice is in the interest of the holders of the Notes.

9.9. *Qualification of the Trustee.* The Trustee shall at all times be a bank or trust company organized under the laws of the United States of America or of any state thereof.

9.10. *Lien of Trustee Upon the Collateral.* Notwithstanding any provisions of this Agreement to the contrary, the Trustee shall be entitled to a lien upon the Collateral prior to the rights or lien of any other person or party, including without limitation, the rights or lien of the holders of the Notes, to secure payment of any fees, which may include attorneys' fees, expenses, costs or liabilities incurred for which the Trustee is entitled to payment, reimbursement or indemnity from the Company and for which the Trustee has not been paid or reimbursed from any other source. Without limitation on the generality of the foregoing, the Trustee shall be entitled to payment or reimbursement of such item from the Collateral which right shall be superior to the rights of the Company and the holders of the Notes with respect to the Collateral.

9.11. *Inspection by the Company.* The Company and its designated agents shall have the right from time to time, during regular business hours, to inspect and audit, and make copies and extracts of, the books and records of the Trustee pertaining or related to its duties hereunder, upon reasonable notice to the Trustee.

9.12. *Ownership of Notes; Other Transactions.* The Trustee, in its individual or any other capacity, may become the owner or pledgee of Notes, and may otherwise deal with the company with the same rights it would have if it were not the Trustee. Without limiting the foregoing, the Trustee may provide title insurance, escrow and other services to the Company on such terms and conditions as the Trustee and the Company may agree; the Company hereby covenants and agrees with the Trustee that the duties and obligations of the Trustee under this Agreement shall not include the taking of any action in connection with disputes, if any, which may arise between the Company and the Trustee in connection with the rendition of such services.

## ARTICLE 10

### GENERAL PROVISIONS

10.1. *Amendments and Waivers.* (A) The Company and the Trustee, in their discretion, at any time and from time to time, may enter into one or more agreements amending this Agreement or supplemental hereto, in form satisfactory to the Trustee, for any one or more of or all the following purposes:

(a) To add to the covenants and agreements of the Company to be observed thereafter and during the period, if any, in such supplemental agreement or agreements expressed, for the protection or benefit of the holders of the Notes;

(b) To evidence the succession of another corporation to the Company, or successive successions, and the assumption by a successor corporation of the covenants and obligations of the Company in the Notes and in this Agreement or any supplemental agreement contained;

(c) To cure any ambiguity or to correct or supplement any provision contained herein which may be defective or inconsistent with any other provision contained herein or in any agreement supplemental hereto, or to make any other provisions in regard to matters or questions arising under this Agreement which the Board of Directors of the Company may deem necessary or desirable and which shall not be inconsistent with the provisions of this Agreement and which shall not adversely affect the interests of the holders of the Notes; and

## COLLATERAL TRUST AGREEMENT

The Collateral Trust Agreement ("Agreement") is entered into as of June 17, 1985, between COMMERCIAL ACCEPTANCE CORPORATION, a California corporation (the "Company"), and UNITED SECURITY TRUST COMPANY, (the "Trustee"), with reference to the following facts:

A. The Company is a duly licensed real property broker and personal property broker under the laws of the State of California, engaged in the business of making loans.

B. The Company has authorized the issue from time to time of \_\_\_\_\_ aggregate principal amount of its Trust Notes (the "Notes").

C. This Agreement is made with the Trustee for the pro-rata benefit of the holders of the Notes from time to time outstanding to secure the payment of principal of an interest on the Notes and the due performance of, and compliance with, all the provisions of the Notes and this Agreement.

## ARTICLE 1

### GRANT OF SECURITY INTEREST

1.1. *Grant of Security Interest.* The Company hereby pledges and grants to the Trustee and its successors in trust and their assigns a continuing security interest in and lien on all of the following property (the "Collateral"):

(a) All right, title and interest of the Company in and to the promissory notes described in schedules hereafter executed by the Company and delivered to the Trustee (collectively, the "Pledged Notes"), and all collateral and security therefor including without limitation all collateral and security provided pursuant to any and all pledges, assignments, security agreements, mortgages and deeds of trust securing the Pledged Notes (collectively, the "Pledged Note Security Documents");

(b) All proceeds of the foregoing;

(c) All claims, rights, powers, privileges and remedies on the part of the Company, whether arising under the Pledged Notes, the Pledged Note Guarantees, the Pledged Note Security Documents, by statute, at law, in equity, or otherwise, consequent on any failure on the part of any obligor to pay or perform any indebtedness, liability or obligation under the Pledged Notes or the Pledged Note Guarantees or the Pledged Note Security Documents; and

(d) All funds deposited from time to time in the Collateral Account and Interest Account hereinafter referred to.

1.2. *Obligations Secured.* The security interest granted herein is granted for the equal and proportionate benefit and security of all holders of the Notes to secure the payment of all principal and interest on the Notes and the payment and performance of all other indebtedness, liabilities and obligations of the Company under this Agreement, so that the principal and interest on every Note and all other sums secured hereby shall, subject to the terms hereof, be equally and proportionately secured hereby.

## ARTICLE 2

### THE NOTES

2.1. *Limitation as to Issue of Notes.* The aggregate principal amount of Notes which may be issued by the Company and authenticated by the Trustee hereunder shall not exceed \_\_\_\_\_ at any one time outstanding; provided that the Company may from time to time increase said amount by giving written notice thereof to the Trustee.

2.2. *Terms of the Notes; Series.* The Notes shall be issued from time to time by the Company hereunder, shall have varying maturities and shall bear interest on the unpaid principal balance thereof from the date of issuance all as determined by the Company. Notes shall be issued in separate

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(d) To add, with the consent of the Trustee (which consent may be withheld by the Trustee in its sole discretion), additional Series of Notes to be issued hereunder, which additional Series shall be on the same terms and conditions as the Notes (except as to interest rate and maturity), and in the event an agreement supplemental hereto is entered into to provide for such additional Series of Notes, all references herein to the "Notes" (except as to interest rate and maturity) shall be deemed to include all Series issued hereunder. All of the provisions of each Series Designation upon execution by the Company and the Trustee shall be incorporated in this Agreement as if set forth in full herein. To the extent the provisions of a Series Designation conflict with the provisions of this Agreement such provisions of a Series Designation shall control only with respect to the particular Series.

Any amendment or supplemental agreement authorized by the provisions of this Section 10.1(A) may be executed by the Company and the Trustee without the consent of the holders of any of the Notes.

(B) This Agreement may be amended, and the observance of any term or condition of this Agreement may be waived, with and only with the prior written consent of the Company, the Trustee and (except as permitted by subsection (A) above) the holders of a majority in principal amount of the Notes at the time outstanding (exclusive of any Notes then owned by the Company or any Affiliate of the Company); provided that no such amendment or waiver shall, without the written consent of the holders of all of the Notes at the time outstanding:

(a) Reduce the amount or extend the time of any payment of any principal on any Note, or reduce the rate or extend the time of any payment of any interest thereon; or

(b) Amend any of the provisions of this Agreement as to the application of the proceeds of any of the Collateral; or

(c) Reduce the percentage of the principal amount of Notes the holders of which are required to consent to any such amendment or waiver under this Section 10.1.

*10.2 Documents Affecting Immunity or Indemnity.* If in the opinion of the Trustee any document required to be executed pursuant to the terms of Section 10.1 affects any interest or right or duty or immunity or indemnity in favor of the Trustee under this Agreement, the Trustee may in its discretion decline to execute such document.

*10.3 Execution of Amendment to Agreement.* In executing, or accepting the additional trusts created by any amendment permitted by Section 10.1 or the modifications thereby of the trusts created by this Agreement, the Trustee shall be entitled to receive, and shall be fully protected in relying upon, an opinion of counsel satisfactory to the Trustee stating that the execution of such amendment is authorized or permitted by this Agreement.

*10.4 Effect of Amendments to Agreement.* Upon the execution of any amendment to this Agreement as provided in Section 10.1, this Agreement shall be modified in accordance therewith, and such amendment shall form a part of this Agreement for all purposes; and every holder of Notes theretofore or thereafter issued and delivered hereunder shall be bound thereby.

*10.5 Provisions Subject to Applicable Law.* All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and the same are intended to be limited to the extent necessary so that they will not render this Agreement invalid or unenforceable under the provisions of any applicable law. If any term of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such term shall not be affected thereby.

*10.6 Termination.* Upon the payment in full of the principal of and interest on the Notes and all other indebtedness secured by this Agreement in accordance with the terms thereof and hereof, this Agreement shall terminate and the Trustee, at the Company's expense, will execute and deliver such instruments, if any, as the Company may reasonably request to evidence such termination.

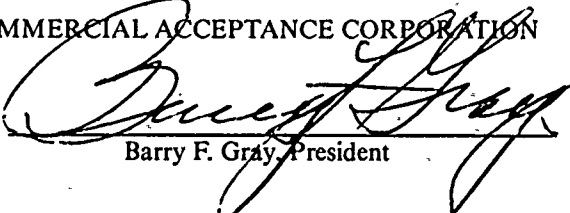
10.7 *Notices.* All notices and other communications hereunder shall be in writing and shall be deemed to have been given when delivered or mailed by first class registered or certified mail, postage prepaid, addressed (a) if to the Company, at 411 W. Seventh Street, Los Angeles, California 90014, or at such other address as may have been furnished to the Trustee by the Company; or (b) if to the Trustee, at such address as the Trustee may designate, by notice to the Company and each holder of the Notes; (c) if to any holder of a Note, at such address as shall be reflected in the books maintained by the Company for the registration of the Notes pursuant to Section 2.6, or at such other address as such holder of a Note shall have furnished to the Company and the Trustee.

10.8 *Governing Law.* This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of the Trustee without reference to principles of conflicts of law.

10.9 *Survival.* All warranties, representations and covenants made by the Company in this Agreement or in any certificate or any instrument delivered by it or on its behalf under this Agreement shall be considered to have been relied upon by the Trustee and shall survive the delivery of the Notes regardless of any investigation made by or on behalf of the Trustee or any of the holders of the Notes. All statements in any such certificate or other instrument shall constitute representations and warranties by the Company.

10.10 *Miscellaneous.* On request the Trustee will furnish to the Company and any holder of any Note a written statement of the amounts due thereunder. Subject to Section 10.1 (relating to amendments), this Agreement may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought. This Agreement shall be binding upon the Company and its respective successors and assigns, and all persons claiming under or through the Company, or any such successor or assign, and shall inure to the benefit of and be enforceable by the Trustee and its successors and assigns, and the holders of the Notes at the time outstanding. The headings in this Agreement are for purposes of reference only and shall not limit or otherwise affect the meanings hereof. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Company and the Trustee have caused this instrument to be executed by their respective officers thereunto duly authorized.

COMMERCIAL ACCEPTANCE CORPORATION  
By   
Barry F. Gray, President

[Corporate Seal]

Attest:

  
David A. Facciani, Secretary


UNITED SECURITY TRUST COMPANY  
By   
Eugene W. Ford, President

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SCHEDULE AND ASSIGNMENT NO. \_\_\_\_\_

TO:

RE: \_\_\_\_\_  
 ("Debtor")

Gentlemen:

Pursuant to Section 4.4 of the Collateral Trust Agreement dated as of June 17, 1985 between you, as Trustee, and the undersigned, we are concurrently herewith delivering to you the following documents and instruments:

1. *Pledged Note*: Original Promissory Note, in the original principal amount of \$ \_\_\_\_\_, dated \_\_\_\_\_, 19\_\_\_\_, executed by the above-named Debtor, payable to the order of the undersigned.
2. *Pledged Note Guarantees*: (If none, so state.) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

3. *Pledged Note Security Documents*:

3.1 Conformed copies of the following Deed(s) of Trust together with conformed copies of Assignments thereof by us to you and copies of commitments for title insurance with respect thereto:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

3.2 Original Security Agreement, dated \_\_\_\_\_, 19\_\_\_\_, executed by Debtor in favor of the undersigned and copy of Uniform Commercial Code Financing Statement, dated \_\_\_\_\_, 19\_\_\_\_, executed by Debtor and by the undersigned as secured party, showing you as the assignee of secured party, filed in the office of \_\_\_\_\_ on \_\_\_\_\_, 19\_\_\_\_ (File No. \_\_\_\_\_). (If none, so state): \_\_\_\_\_

The undersigned hereby pledges to you, and grants to you a continuing security interest in, the above Pledged Note, Pledged Note Guarantees, and Pledged Note Security Documents, and all proceeds of the foregoing, and all claims, rights, powers, privileges and remedies on the part of the undersigned, whether arising thereunder, by statute, at law, in equity, or otherwise, consequent on any failure on the part of any obligor to pay or perform any indebtedness, liability or obligation under the Pledged Note, or the Pledged Note Guarantees or the Pledged Note Security Documents, for the equal and proportionate benefit and security of all holders of the Notes issued pursuant to the Collateral Trust Agreement, to secure the payment of all principal and interest on the Notes and the payment and performance of all other indebtedness, liabilities and obligations of the undersigned under the Collateral Trust Agreement. The undersigned hereby represents and warrants to you as follows:

1. The present unpaid principal balance of the above Pledged Note is \$ \_\_\_\_\_.
2. All representations and warranties of the undersigned set forth in Paragraph 5.1 of the Collateral Trust Agreement, pertaining to the above Pledged Note, Pledged Note Guarantees (if any), and Pledged Note Security Documents are true and correct, the above Debtor, and the documents and instruments delivered herewith constitute all security agreements, deeds of trust and other instruments securing the above Pledged Note.

Based upon the foregoing, pursuant to Paragraph 4.4 of the Collateral Trust Agreement, the undersigned hereby requests that \$ \_\_\_\_\_ be disbursed from the Collateral Account to the undersigned.

DATED: \_\_\_\_\_, 198\_\_\_\_.

COMMERCIAL ACCEPTANCE CORPORATION

By \_\_\_\_\_  
 Title \_\_\_\_\_

196A-4834-1A2  
○ ○ ○ ○ ○ ○

**COLLATERAL TRUST AGREEMENT**

between

**COMMERCIAL ACCEPTANCE CORPORATION**

and

**UNITED SECURITY TRUST COMPANY, *as Trustee***

**Dated as of June 17, 1985**

**Collateral Trust Notes**

**Series \_\_\_\_\_**

\*See attached supplement and addendum hereto, for specific provisions and conditions of the proposed offering.

**SMITH & STEPHENS**

Accountancy Corporation 35 SO. RAYMOND AVENUE • SUITE 303 • PASADENA, CA 91105 • (213) 578-1015

Board of Directors  
Commercial Acceptance Corporation

We have examined the consolidated balance sheets of Commercial Acceptance Corporation (a California corporation) and subsidiaries as of December 31, 1984 and 1983, and the related consolidated statements of earnings, changes in stockholders' equity, and financial position for the years then ended. Our examinations were made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the consolidated financial statements referred to above present fairly the financial position of Commercial Acceptance Corporation and subsidiaries at December 31, 1984 and 1983, and the results of its operations and changes in its consolidated financial position for the years then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

Pasadena, California  
May 15, 1985

**COMMERCIAL ACCEPTANCE CORPORATION AND SUBSIDIARIES****BALANCE SHEET**  
Years ended December 31,**ASSETS**

	1984	1983	1982
Cash (note K) .....	\$ 1,625,031	\$ 1,166,541	\$ 1,697,651
Receivables			
Loans (notes C and F) .....	31,723,914	23,777,331	11,755,608
Interest .....	957,809	914,194	210,231
Loan fees .....	117,140	—	93,500
Employees .....	1,150	—	—
	<u>32,800,013</u>	<u>24,691,525</u>	<u>12,059,339</u>
Less allowance for doubtful receivables .....	135,000	100,000	—
	<u>32,665,013</u>	<u>24,591,525</u>	<u>12,059,339</u>
Prepaid expenses .....	227,219	75,000	466,434
Real Estate owned (note E) .....	1,868,258	—	—
Fixed assets - at cost			
Furniture and fixtures .....	59,723	50,161	37,077
Leasehold improvements .....	21,735	20,030	19,156
	<u>81,458</u>	<u>70,191</u>	<u>56,233</u>
Less accumulated depreciation and amortization (note A2) .....	42,877	28,068	21,086
	<u>38,581</u>	<u>42,123</u>	<u>35,147</u>
Deferred taxes (note G) .....	43,598	—	—
Other assets			
Deposits .....	890	890	1,579
Organization costs, less accumulated amortization of \$6,677, \$3,064 and \$2,329, respectively .....	12,000	613	1,348
Other .....	38,500	—	—
Deferred charges, less accumulated amortization of \$207,908, \$174,893 and \$132,154, respectively (note D) .....	48,237	81,252	123,991
	<u>99,627</u>	<u>82,755</u>	<u>126,918</u>
	<u>\$36,567,327</u>	<u>\$25,957,944</u>	<u>\$14,385,489</u>

**LIABILITIES AND STOCKHOLDERS' EQUITY**

	1984	1983	1982
Note payable - Stockholder .....	\$ —	\$ —	\$ 10,000
Notes payable (note F) .....	30,263,408	21,237,011	12,263,597
Contract payable .....	—	—	81
Client reserves .....	1,425,394	600,195	475,412
Accounts payable .....	152,418	52,131	55,564
Accrued liabilities			
Interest .....	3,521,636	3,091,128	886,475
Payroll taxes .....	3,551	5,767	5,689
	<u>3,525,187</u>	<u>3,096,895</u>	<u>892,164</u>
Income taxes payable .....	168,000	15,558	12,746
Deferred loan fee income (note A4) .....	282,234	190,081	155,908
Lease commitments (note H) .....	—	—	—
Deferred taxes (note G) .....	—	402	402
Stockholders' equity			
Common stock			
Series A—authorized, 30,000 shares; issued and outstanding 17,000 shares .....	943,592	943,592	943,592
Less treasury stock .....	(218,623)	(17,000)	—
	<u>724,969</u>	<u>926,592</u>	<u>943,592</u>
Retained earnings (deficit) .....	25,717	(160,921)	(423,977)
	<u>750,686</u>	<u>765,671</u>	<u>519,615</u>
	<u>\$36,567,327</u>	<u>\$25,957,944</u>	<u>\$14,385,489</u>

The accompanying notes are an integral part of these statements.

COMMERCIAL ACCEPTANCE CORPORATION AND SUBSIDIARIES

STATEMENT OF CHANGES IN STOCKHOLDERS' EQUITY

Years ended December 31, 1984, 1983 and 1982

	Common Stock		Treasury Stock	Contributed Capital	Accumulated Deficit	Total
	Series A	Series B				
Balance at January 1, 1982 .....	\$500,000	\$500	\$ —	\$116,500	\$(436,814)	\$180,186
Transferred to client interest reserve .....	—	—	—	(46,500)	—	(46,500)
Converted to Series A common stock during the year (note L) .....	500	(500)	—	—	—	—
Prior period adjustment for additional interest (note M) .....	—	—	—	—	(112,511)	(112,511)
Additional shares sold during the year (note L) .....	443,092	—	—	(70,000)	—	373,092
Net earnings for the year .....	—	—	—	—	125,348	125,348
Balance at December 31, 1982 .....	943,592	—	—	—	(423,977)	519,615
Shares repurchased during the year .....	—	—	(17,000)	—	—	(17,000)
Net earnings for the year .....	—	—	—	—	263,056	263,056
Balance at December 31, 1983 .....	\$943,592	\$ —	\$(17,000)	\$ —	\$(160,921)	\$765,671
Shares repurchased during the year .....	—	—	(201,623)	—	—	(201,623)
Net earnings for the year .....	—	—	—	—	186,638	186,638
Balance at December 31, 1984 .....	\$943,592	\$ —	\$(218,623)	\$ —	\$ 25,717	\$750,686

STATEMENT OF CHANGES IN FINANCIAL POSITION

Years ended December 31, 1984, 1983 and 1982

	1984	1983	1982
Sources of funds			
From operations			
Net income for the year .....	\$ 186,638	\$ 263,056	\$ 125,348
Items not using (providing) funds:			
Depreciation and amortization .....	47,824	50,456	61,124
Accounts receivable .....	—	(610,463)	(237,997)
Prepaid expenses .....	(152,219)	391,434	(457,394)
Deferred loan fees .....	92,153	34,173	(4,186)
Accrued liabilities .....	429,292	2,207,543	808,925
Allowance for doubtful receivables .....	35,000	100,000	—
Increase in notes payable .....	9,026,397	8,963,333	7,517,501
Increase in client reserves .....	825,199	124,783	475,412
Increase (decrease) in accounts payable .....	100,287	(3,433)	3,580
Increase in deferred taxes .....	—	—	402
Increase in incomes taxes payable .....	152,442	—	—
Increase in common stock .....	—	—	443,092
Decrease in deposits .....	—	689	3,143
	<u>\$10,742,013</u>	<u>\$11,521,571</u>	<u>\$8,738,950</u>
Applications of funds			
Acquisition of fixed assets .....	\$ 11,267	\$ 13,958	\$ 14,200
Prior period adjustment .....	—	—	112,511
Decrease in paid in capital .....	—	—	116,500
Increase in real estate owned .....	1,868,258	—	—
Increase in other assets .....	49,887	—	—
Increase (decrease) in cash .....	458,490	(531,110)	1,361,476
Increase in loans receivable .....	8,108,488	12,021,723	7,134,263
Purchase of treasury stock .....	201,623	17,000	—
Increase in deferred income taxes .....	44,000	—	—
	<u>\$10,742,013</u>	<u>\$11,521,571</u>	<u>\$8,738,950</u>

The accompanying notes are an integral part of these statements.

Commercial Acceptance Corporation  
and Subsidiaries

CONSOLIDATED FINANCIAL STATEMENTS  
AUDITORS' REPORT

December 31, 1984, 1983 and 1982



**Years ended December 31,**

	1984	1983	1982
<b>Income</b>			
Interest .....	\$4,817,656	\$3,281,630	\$1,337,725
Loan fees (note A4) .....	1,345,647	824,597	424,006
Other fees .....	—	62,922	36,459
Rental .....	107,421	—	—
Miscellaneous .....	—	1,546	—
	<u>6,270,724</u>	<u>4,169,149</u>	<u>1,799,646</u>
<b>Operating expenses</b>			
Interest .....	4,017,061	2,509,290	1,204,324
General and administrative .....	<u>1,943,025</u>	<u>1,366,403</u>	<u>920,301</u>
	<u>5,960,086</u>	<u>3,875,693</u>	<u>2,124,625</u>
Operating profit (loss) .....	310,638	293,456	(324,979)
<b>Other income</b>			
Gain on sale of asset .....	<u>—</u>	<u>—</u>	<u>463,675</u>
Earnings before income taxes and extraordinary credit .....	310,638	293,456	138,696
<b>Income taxes</b>			
Federal .....	100,000	98,000	38,250
State .....	<u>45,000</u>	<u>30,400</u>	<u>13,348</u>
Earnings before extraordinary credit .....	<u>165,638</u>	<u>128,400</u>	<u>51,598</u>
Extraordinary credit - tax benefit from net operating loss carryforward (note J) .....	<u>(21,000)</u>	<u>(98,000)</u>	<u>(38,250)</u>
<b>NET EARNINGS</b> .....	<u>\$ 186,638</u>	<u>\$ 263,056</u>	<u>\$ 125,348</u>

**The accompanying notes are an integral part of these statements.**

**COMMERCIAL ACCEPTANCE CORPORATION**  
**INSURED COLLATERAL TRUST NOTES**  
 (Interest Payable Quarterly)  
 Series 2078F

**No. 2078-**

FOR VALUE RECEIVED, COMMERCIAL ACCEPTANCE CORPORATION, a California corporation (the "Company"), hereby promises to pay to

**the principal amount of**

**...or registered assigns.**

[illegible]

and the Collateral Trust Agreement between the Company and United Security Trust Company, as Trustees dated as of June 17, 1982 (the "Collateral Trust Agreement") and by its acceptance of this Note in full and on the terms and conditions. This Note is not intended to provide the benefits of collateral trust security to the Trust Agreement, but rather to provide the benefits of collateral trust security to the Company. The Collateral Trust Agreement is intended to provide for the Company's security by its trustee pursuant to the Collateral Trust Agreement, as from time to time supplemented and amended and exercises the remedies provided for therein or otherwise available in respect thereof, as provided therein. Reference is made to the Collateral Trust Agreement for a description of the nature and terms of the security afforded thereby and the terms and conditions upon which this Note is secured.

[illegible]

Upon the occurrence of an event of Default, as defined in the Collateral Trust Agreement, the principal amount of this Note may be declared immediately due and payable, upon the conditions, to the minor and with the effect provided in the Collateral Trust Agreement. Unless the Trustee's Authorization Certificate on this Note has been executed by the Trustee, by manual signature, this Note shall not be entitled to any benefit under the Collateral Trust Agreement and shall not be valid or obligatory for any purpose.

**This Note is made and delivered in Los Angeles, California, and shall be governed by the laws of the State of California.**

**Los Angeles, California**

**Trustee's Authentication Certificate**  
**This Note is one of the Notes described in the Collateral Trust**

Attest

By

COMMERCIAL ACCEPTANCE CORPORATION

Agreement referred to above. Dated \_\_\_\_\_, 19\_\_\_\_.

UNITED SECURITY TRUST COMPANY

By \_\_\_\_\_

**Secretary**

President



COMMERCIAL ACCEPTANCE CORPORATION AND SUBSIDIARIES

NOTES TO FINANCIAL STATEMENTS

December 31, 1984 and 1983

**NOTE A—SUMMARY OF ACCOUNTING POLICIES**

A summary of the company's significant accounting policies consistently applied in the preparation of the accompanying financial statements follows.

**1. Principles of Consolidation**

The consolidated financial statements include the accounts of the company and its wholly-owned subsidiaries, which were established during the year ended December 31, 1984. All significant intercompany transactions have been eliminated.

**2. Depreciation and Amortization**

Depreciation and amortization are provided for in amounts sufficient to relate the cost of depreciable assets to operations over their estimated service lives, using the straight-line method.

**3. Investment Tax Credits**

Investment tax credits are accounted for by the "flow-through" method. Under this method, credits are recognized as a reduction of income tax expense in the year the credits are realized.

**4. Recognition of Fees on Loans**

The company follows the practice of recognizing income from fees generated from loans using the acquisition factor of 50%-75% plus sum-of-the-digits method over the life of the loan for financial reporting purposes. For income tax purposes, the company follows the practice of recognizing income from fees generated from loans in the year received.

**NOTE B—HISTORY OF THE CORPORATION**

The company was incorporated in the State of California on October 9, 1979 for the purpose of engaging primarily in the business of making secured term loans collateralized by income producing real estate and other business assets.

**NOTE C—LOANS RECEIVABLE**

Loans receivable range from 1-5 years and are secured by income producing real estate and other business assets. Interest charged on these loans vary from prime plus 3% to prime plus 6% with a minimum interest rate of 14%. Of the total loans receivable at December 31, 1984 and 1983, \$60,000 were made to companies in which certain stockholders were also stockholders of Commercial Acceptance Corporation and are fully secured by machinery and equipment under the terms of the loan agreements. Additionally, loans totalling \$326,417 at December 31, 1984 and \$301,417 at December 31, 1983, have been made to various officers/stockholders of the company and are fully secured by real estate.

**NOTE D—DEFERRED CHARGES**

Those costs incurred to date attributable to the offering circulars, collateral trust note and real estate mortgage trust note agreements and personal property broker's license have been deferred as they will benefit future operations. These costs are being amortized on a sum-of-the-digits method over the term of the trust notes which are 8 years and 5 years, respectively.

**NOTE E—REAL ESTATE OWNED**

During the year ended, December 31, 1984, the company through compromise and settlement agreements on two notes receivables took title to various pieces of developed real estate which at present it is holding for investment purposes.

**NOTE F—NOTES PAYABLE**

The company issued floating collateral trust notes, Series 1980 due December 30, 1988, to various investors collateralized by a pro-rata interest in its commercial loan portfolio. Interest on these loans is at prime plus 1% but not less than 12% per annum.

Further, the Trustee, or in the event there shall be no Trustee, the Holders or any committee or committees acting on their behalf, shall have the right under this agreement to proceed directly against the Guarantor without the necessity for demand, notice or other action by, to, or with respect to the Principal. The premium on this agreement is not refundable for any reason including payment on the Notes prior to maturity. This Agreement does not insure against loss of any redemption or repayment which at this time may become due in respect of any Note or against any risk other than Nonpayment.

The Guarantor warrants that this Agreement will be reinsured with a major reinsurance company in the world whose Global rating with either Standard & Poor's or Moody's is the equivalent of an A. M. Best rating of A-12 or better.

## INTEREST AND PRINCIPAL SURETY BOND

Commercial Acceptance Corporation has in force an Interest and Principal Surety Bond issued by BUSICORP S.A.R.L., Luxembourg. Under the terms of this Bond, the Surety shall pay to the Trustee, for payment to the investors, amounts equal to that portion of the principal and/or interest, if any, which shall be unpaid for any reason by the Company.

KNOW ALL MEN BY THESE PRESENTS, for consideration received that Busicorp S.A.R.L., a Luxembourg stock corporation ("Guarantor") as Guarantor for Commercial Acceptance Corporation ("Principal"), is held and firmly bound unto United Security Trust Company, Santa Barbara, as Trustee ("Trustee") and unto the Holders under a Collateral Trust Agreement, ("Trust"), between the Principal and the Trustee relating to the Notes (as that term is described in the "Trust Agreement"), and to its successors of the Notes from time to time, for that portion of the principal and interest on the Notes which shall become due for payment and the obligations to maintain the Interest Reserve Account in the Trust Agreement, but shall be unpaid by reason of Nonpayment by the Principal.

Upon the happening or continuance of Nonpayment by the Principal, the Guarantor shall remedy such Nonpayment by making payments on or before the time period specified in the Trust Agreement to the Trustee of the principal and/or interest of the Notes or to the Interest Reserve Account as described in the Trust Agreement upon written notification by the Trustee.

In the event there shall be no Trustee, then acting under the Trust Agreement, the Guarantor shall make payments directly to the Noteholders or any protective committee or committees established in their behalf. Upon such payment, the Guarantor shall be subrogated, to the extent provided by Law or the Trust Agreement, to all rights and remedies of the Trustee or the Holders of the Notes, as the cause may be, as to which such payments have been made.

As used herein, the following terms shall have the meaning indicated: The term "Holder" shall mean any person other than the Issuer who at the time of Nonpayment is the registered owner of the Note; the term "Due for Payment," when referring to the principal of the Notes, shall mean the date when the stated maturity date has been reached or such earlier date on which payment is due by reason of a call for redemption, acceleration, or other advancement of maturity, as provided for in the Notes, and when referring to interest on the Notes shall mean the stated date for payment of interest; and the term "Nonpayment" shall mean the failure of the Principal to have provided sufficient funds to the Trustee for Payment in full of all principal and interest on the Notes which are Due for Payment or to have provided sufficient funds to the Trustee for payment in full of the amounts required to maintain the Interest Reserve Base Amount.

This Guarantee is effective upon payment of the premium and is noncancellable for any reason, including without limitation, the voluntary or involuntary commencement or maintenance of bankruptcy, reorganization or insolvency proceedings, assignment for the benefit of creditors by, for, or against the Principal; or any negligent misrepresentation or omission made by the Principal with reference to the issuance of this Guarantee.

## COMMERCIAL ACCEPTANCE CORPORATION AND SUBSIDIARIES

### NOTES TO FINANCIAL STATEMENTS—(Continued)

December 31, 1984 and 1983

#### NOTE F—NOTES PAYABLE (CONTINUED)

The company issued real estate mortgage trust notes Series 300/301 to various investors collateralized by real property due October 31, 1984 with interest at 15% per annum. As of December 31, 1984, these notes were paid in full.

The company issued insured investor notes as to interest and principal payments Series 400/401 to various investors collateralized by real and/or personal business property due September 30, 1985 with interest at 13.5% per annum.

During the year ended December 31, 1983, the company issued the following:

1) Insured investor notes as to interest and principal payments Series 500/501 due March 31, 1986 with interest at 11.5% per annum; 2) Insured investor notes as to interest and principal payments Series 510/511 due January 14, 1987 with interest at 11.5% per annum; 3) Collateral trust notes Series 600/601 due July 1, 1984 with interest at 13% per annum paid in full at December 31, 1984; 4) Series 610 due October 31, 1984 with interest at 13.5% per annum; 5) Series 100 due October 31, 1984 with interest at prime plus 1, maximum 18% paid in full at December 31, 1984 and 6) Series 620 due January 31, 1985 with interest at 13.5% per annum.

During the year ended December 31, 1984, the company issued the following: 1) Collateral trust notes, Series 310, due September 30, 1987 with interest at 15% per annum; 2) Insured investor notes as to interest and principal, Series 630, due April 30, 1985, with interest at 12% per annum; 3) Insured investor notes as to interest and principal, Series 640, due July 31, 1985, with interest at 14% per annum; 4) Insured investor notes as to interest and principal, Series 650, due September 30, 1985, with interest at 13% per annum; 6) Insured investor notes as to interest and principal, Series 670/671, due February 28, 1987 with interest at 13¼% per annum; 7) Insured investor notes as to interest and principal, Series 677/678, due March 31, 1986 with interest at 13¼% per annum; 8) Insured investor notes as to interest and principal, Series 120, due April 30, 1990 with interest at 13¼% per annum; and 9) Collateral trust notes, Series 110, due February 14, 1986, with interest at 13¼% per annum.

All of the above mentioned offerings are secured by both real and/or personal business property.

#### NOTE G—DEFERRED INCOME TAXES

Deferred income taxes are provided for the differences in timing of reporting transactions for financial statements and income tax purposes. The principal cumulative timing differences relate to the recognition of fees on loans as explained in Note A and California franchise tax.

#### NOTE H—LEASE COMMITMENT

The company currently leases its offices at \$4,100 a month. The lease expires March 31, 1987. Rent expense for the years ended December 31, 1984 and 1983 were \$77,671 and \$22,659, respectively.

#### NOTE I—OFFERING CIRCULARS

The company had three offering circulars outstanding from prior years at December 31, 1983. A real estate mortgage trust note Series 300/301 to a maximum of \$25,000,000, a floating rate collateral trust note Series 1980 to a maximum of \$20,000,000, and a real estate mortgage Series 400/401 to a maximum of \$5,000,000.

The company, during the year ended December 31, 1983 and six additional offering circulars; notably, insured investors notes Series 500/501 and Series 510/511 at a maximum \$5,000,000 each; collateral trust notes Series 600/601 at a maximum \$1,000,000; collateral trust notes Series 610, Series 100 and Series 620 all at a maximum \$2,500,000 each.

COMMERCIAL ACCEPTANCE CORPORATION AND SUBSIDIARIES

NOTES TO FINANCIAL STATEMENTS—(Continued)

December 31, 1984 and 1983

NOTE I—OFFERING CIRCULARS (CONTINUED)

During the year ended December 31, 1984, the company issued the following offering circulars: 1) Collateral trust notes, Series 310, at a maximum of \$10,000,000; 2) Collateral trust notes, Series 110, at a maximum of \$2,500,000; 3) Insured investor notes, Series 630, at a maximum of \$2,500,000; 4) Insured investor notes, Series 640, at a maximum of \$2,500,000; 5) Insured investor notes, Series 650, at a maximum of \$3,000,000; 6) Insured investor notes, Series 665/666, at a maximum of \$2,000,000; 7) Insured investor notes, Series 670/671, at a maximum of \$3,000,000; 8) Insured investor notes, Series 677/678, at a maximum of \$1,000,000; and 9) Insured investor notes, Series 120, at a maximum of \$7,000,000.

The proceeds are derived principally from qualified corporate pension and profit sharing trusts and other institutional investors. The company has entered into indenture agreements with First California Surety Corporation (a wholly-owned subsidiary), Fidelity National Trust Company and California First Bank, respectively, for the protection of investors under each program.

All proceeds are being loaned to client borrowers and are collateralized by income producing real estate and other business assets.

NOTE J—INCOME TAXES

The company did realize a tax benefit during the year ended December 31, 1984 of \$21,000 from its net operating loss carryforward of approximately \$48,000 and unused investment tax credits of \$5,400.

NOTE K—CASH

Included in this balance are undrawn investor funds held in trust by the First California Surety Corporation (a wholly-owned subsidiary), Fidelity National Trust Company and California First Bank. As of December 31, 1984 and 1983, the amount in trust totalled approximately \$1,528,200 and \$1,142,000, respectively.

DESIGNATION OF SERIES

2078F

Insured Collateral Trust Notes

Commercial Acceptance Corporation (the "Company") hereby designates Insured Collateral Trust Notes, Series 2078F for inclusion as Collateral Trust Notes subject to the provision of that certain Collateral Trust Agreement (the "Agreement") between the Company and United Security Trust Company, as Trustee, dated June 17, 1985. As more fully described in the Notes, this Series will have the following key terms:

- A. The Company has authorized the issuance, from time to time, of not more than \$1,000,000.00 aggregate principal amount of its Insured Collateral Trust Notes, Series 2078F
- B. **Rate of Interest.** The rate of interest shall be Prime Rate + 1% per annum. This rate will be adjusted on the first day of each calendar quarter based upon the Prime Rate on the last business day of the preceding calendar quarter. The rate of interest, however, shall be no less than 10% per annum, and no greater than 15% per annum.
- C. **Payment Terms.** Payment of interest shall be made on the last day of January, April, July and October in each year.
- D. **Maturity Date.** The Notes shall mature as to payment on July 31, 1988.
- E. **Insurance.** The Company has in force an Interest and Principal Surety Bond (the "Bond") issued by Busicorp S.A.R.L., Luxembourg, as agent for International Reinsurance of Luxembourg S.A. (the "Surety") that has a reinsurance treaty with A.A.E.P. Management representing the Luxembourg Reinsurance Pool whose individual members are equivalent to an A.M. Best rating of A 12 or better.
- F. The California Corporate Securities Act of 1968, section 25102(e) and 25102(f) allows the Company, at its discretion, to accept Subscriptions on a limited basis from KEOGH plans, IRA's, Corporations and accredited individuals who meet the accepted suitability standards for this investment.

NO SALESMAN OR ANY OTHER PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATIONS OTHER THAN THOSE CONTAINED IN THIS OFFERING CIRCULAR IN CONNECTION WITH THE OFFER CONTAINED HEREIN, AND, IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATIONS MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE COMPANY. THIS DOES NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF ANY OFFER TO BUY IN ANY STATE OTHER THAN THE STATE OF CALIFORNIA.



**\$1,000,000**

**COMMERCIAL ACCEPTANCE CORPORATION**  
**INSURED COLLATERAL TRUST NOTES**

**Series 2078F**

**RATE OF INTEREST: PRIME RATE + 1% PER ANNUM**  
**(10% PER ANNUM MINIMUM)**

Interest Payable Quarterly

or

Compounded to Maturity

**United Security Trust Company, Trustee**

**\$25,000 Minimum Purchase**

Field File No. 196A-4834-1a3

Serial # of Originating Document \_\_\_\_\_

OO and File No. LA-

Date Received 11-24-87

From FBI  
(Name of Contributor)

\_\_\_\_\_  
(Address of Contributor)

LA, Calif.  
(City and State)

By \_\_\_\_\_  
(Name of Special Agent)

To Be Returned ☐ Yes ☐ No Receipt Given ☐ Yes ☐ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6(e), Federal Rules  
of Criminal Procedure ☐ Yes ☒ No

Title: CAC

Reference: \_\_\_\_\_  
(Communication Enclosing Material)

Description: ☒ Original notes re interview of

\_\_\_\_\_  
FD-473

11-30-87  
mw

b6  
b7C

b6  
b7C  
b7D

Nov. 24, 1987  
(Date)

Dinosaur Town LA  
(Location)

I,

(Name)

b6  
b7C  
b7D

hereby authorize  and

\_\_\_\_\_, Special Agents of the

Federal Bureau of Investigation, United States Department of Justice, to place a

☒ Body Recorder

☐ Transmitter

on my person for the purpose of recording any conversations

with John Ellsworth and others

(Name of Subject(s))

which I may have on or about Nov. 24, 1987

(Date)

I have given this written permission to the above-named Special

Agents voluntarily and without threats or promises of any kind.

b6  
b7C  
b7D

Witnesses:

196A-4834-1aB  
O O O O O O

Field File No. 196A-4834-1A4

Serial # of Originating Document \_\_\_\_\_

OO and File No. L-91

Date Received 12-14-87

From FBI  
(Name of Contributor)

\_\_\_\_\_  
(Address of Contributor)

L.A., Calif.  
(City and State)

By \_\_\_\_\_  
(Name of Special Agent)

To Be Returned ☐ Yes ☐ No Receipt Given ☐ Yes ☐ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6(e), Federal Rules of Criminal Procedure. ☐ Yes ☐ No

Title: CAC

Reference: \_\_\_\_\_  
(Communication Enclosing Material)

Description: ☒ Original notes re interview of

\_\_\_\_\_

1-588  
JH

b6  
b7C

b6  
b7C  
b7D



[REDACTED]  
[REDACTED] 12-14-87

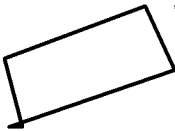
3/ Regr 1985 Busicorp run by [REDACTED] to set  
up companies.  
mainly Ellsworth said owner of 2  
companies. Ellsworth wanted insurance  
treaties and later wanted to create  
captive insurance company - Ellsworth  
never able to do this <sup>because</sup> capital not  
provided. no insurance through  
Busicorp.

[REDACTED]

[REDACTED]

Ellsworth wanted to insure financial  
guarantees from C.A.C. [REDACTED]

[REDACTED]



2

b6  
b7C  
b7D

[Redacted]

[Redacted] no insurance

out of FBI's acc to knowledge of

[Redacted]

196A-4834-1A4

Field File No. 196A-4834-1A5

Serial # of Originating Document \_\_\_\_\_

OO and File No. 2-A.

Date Received 12-14-87

From FBI  
(Name of Contributor)

\_\_\_\_\_  
(Address of Contributor)

2-A, Calif.  
(City and State)

By [Redacted]  
(Name of Special Agent)

To Be Returned ☐ Yes ☐ No Receipt Given ☐ Yes ☐ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6(e), Federal Rules of Criminal Procedure ☐ Yes ☐ No

Title: CAC

Reference: \_\_\_\_\_  
(Communication Enclosing Material)

Description: ☒ Original notes re interview of

[Redacted]

1-5-88  
ab

b6  
b7C

b6  
b7C  
b7D

[redacted]  
12-14-87

1985

[redacted] member of board of Business  
with [redacted], Ellsworth - president.  
met people with CAC - Fallaw.  
[redacted] Ellsworth said a <sup>man</sup> shareholder  
of CAC charged by directors of CAC  
to get insurance solution. no  
insurance issued by Business.  
Insurance issued by Business [redacted]  
[redacted] Ellsworth  
put money in CAC acc - to [redacted].

[redacted]  
no insurance, not in insurance  
business.

196A-4834-1A5  
○ ○ ○ ○ ○ ○

Field File No. 196A-4834-1A6

Serial # of Originating Document \_\_\_\_\_

OO and File No. 2-A

Date Received 12-9-87

From FBI  
(Name of Contributor)

\_\_\_\_\_  
(Address of Contributor)  
2-A, Calif.  
(City and State)

By \_\_\_\_\_  
(Name of Special Agent)

To Be Returned ☐ Yes ☐ No Receipt Given ☐ Yes ☐ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6(e), Federal Rules of Criminal Procedure ☐ Yes ☐ No

Title: CAC

Reference: \_\_\_\_\_  
(Communication Enclosing Material)

Description: ☒ Original notes re interview of  
\_\_\_\_\_

1-8-88  
[Signature]

b6  
b7C

b6  
b7C  
b7D

196A-4834

12-9-87

b6  
b7C  
b7D

[redacted] met with John Ellsworth,  
a principal of several corporations such  
as Desert. Marshall. not represent himself  
as principal of CAC.

~~of [redacted]~~

[redacted]

b6  
b7C  
b7D

[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
F and [redacted] Basicorp being incorporated  
to provide reinsurance for EAC  
investments, investment acts. F and  
various investment pools, each  
pool up, different type of  
investment. Basicorp to provide  
insurance for at least one of  
investment pools [redacted]

b6  
b7C  
b7D

[redacted] said under Lux law that  
~~reinsurance~~ ~~investment~~ corp - have capital (analog)  
 to insurance [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

X [redacted]

[redacted]

[redacted]

[redacted]



[REDACTED]

Did not  
mention seeing funds from  
CAC

196A-4834-1A6  
○ ○ ○ ○ ○ ○

Field File No. 196A-4834-1A7

Serial # of Originating Document \_\_\_\_\_

OO and File No. LA

Date Received 12-16-87

From FBI  
(Name of Contributor)

\_\_\_\_\_  
(Address of Contributor)

L.A., Calif.  
(City and State)

By \_\_\_\_\_  
(Name of Special Agent)

To Be Returned ☐ Yes ☐ No Receipt Given ☐ Yes ☐ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6(e), Federal Rules of Criminal Procedure ☐ Yes ☐ No

Title: CAC

Reference: \_\_\_\_\_  
(Communication Enclosing Material)

Description: ☒ Original notes re interview of  
John Ellsworth  
plus documents

1-12-88  
SP

b6  
b7C

John Ellsworth

12-15-87

4-10-46

9/9/81

5659 Hollywood, Hollywood 90068

217-469-6903

Call 9184 at the request of [redacted]  
[redacted] who knew [redacted] & area of  
CAC.

b6  
b7C  
b7D

CAC loaned to Ellsworth entities,

~~at that time~~

1) Apple Valley Air Service 10/84  
Excess of 750,000

2)

Total of 11.8 million to entities.  
CAC give project loans, [redacted]  
initially and Facciani CEO.

Line of credit for each individual project.

[redacted] and Facciani said CAC funds came  
from pension fund money.

End of 1985 met [redacted]  
Musicorp a business service company  
to establish foreign corp. Facciani and  
[redacted] to set up Capital Insurance  
company. [redacted] said could  
set up capital insurance. FR set  
up by [redacted] and Ellsworth

and [redacted] needed U.S. people  
to act as intermediary.  
Busicorp <sup>S/ARL</sup> initially issued bonds to CAC  
to cover CAC investments.  
Initially solely Busicorp as insurance  
entity.

Busicorp <sup>solely out (its partnership)</sup> S/ARL became Busicorp  
SA (Corp). [redacted] explain  
insurance to [redacted] Faciani and  
Ellsworth. [redacted] wanted to move  
to Dickstein. [redacted] set up FRF -  
reinsurance. Ellsworth place on  
board of directors. Ellsworth signature  
on 12-5-87 FRF - signed based on  
representations. Ellsworth nothing to  
do with getting insurance.

Busicorp and FRF went into liquidation.  
300,000 not back to Ellsworth.  
CAC paid 600,000 in premiums to Busicorp  
FRF.

Ellsworth in process of ~~now~~ purchasing  
CAC.

Ellsworth signature on 2 and 3.  
Said [redacted] coming over to fill charges  
against [redacted].

Only named Busicorp and FRI

Ellsworth refused to sign liquidation papers

Ellsworth and Canvella  
Ellsworth has signed for [ ] and [ ]  
[ ] on several occasions with  
authorization of [ ]

b6  
b7c

Ellsworth to purchase CAC. Vse funds  
from overseas - Will get list. Loans  
given to Ellsworth up till 1987.  
CAC offering circular exempt from  
registration with SEC.

Ellsworth corp paid back 1.2 million  
of the "8th" funds loaned by CAC.

Not aware of any insurance issued by  
Busicorp or FRI after liquidation.

V.L. Coal into chpt. 11 only to protect  
V.L. Coal from depletion of assets by  
State of Calif. Will be out of chpt 11  
by 2/88. 1.5 million loan from CAC.  
D. Wagner never an officer of V.L. Coal.

Real estate held by Desert Marvel can  
pay off CAC debts 11.5 million.

A 1 million dollar check signed by [redacted] to furnish cash and property in return for 50% interest of U.S. Coal. Gacciani wants 1 million dollars for U.S. Coal loans. ~~Check~~ I furnished 1 million check to CTC on acct I had in Belgium.

b6  
b7c

Ellsworth <sup>signature</sup> on D's acct. only if purchase <sup>signature</sup> equipment. I got no money. Use two signatures if purchase equipment.

~~Ellsworth~~ Gacciani & [redacted] knew of Es past records.

~~Ellsworth~~ <sup>Ellsworth</sup> nothing to do with Wagner purchases.

I sent Marvel via Ellsworth furnished deed against insurance for Little Tunnel <sup>branch</sup> on Riverside Ranch furnished [redacted] [redacted] gave representations in writing that insurance for ~~asset~~ ~~Marvel~~ all of CTC loans that needed to be insured prior to and after 1985.

196A48341A7

gross cash flows 2 million from  
11.8 million / Remained in expenses

E managed holding shares from 1987-1996.  
F and [ ] would provide loans to  
Ellsworth prior to other loans being  
paid off.

most funds loaned to Ellsworth  
prior to F + [ ] coming to E for  
insurance.

Ellsworth <sup>loans</sup> never in default, notes not  
due yet.

Will get documents after fax.

Field File No. 196A-4834-LA8

Serial # of Originating Document \_\_\_\_\_

OO and File No. 2-A

Date Received 1-20-88

From FBI  
(Name of Contributor)

\_\_\_\_\_  
(Address of Contributor)

2-A, Calif  
(City and State)

By \_\_\_\_\_  
(Name of Special Agent)

To Be Returned ☐ Yes ☐ No      Receipt Given ☐ Yes ☐ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6(e), Federal Rules of Criminal Procedure ☐ Yes ☐ No

Title: CAC

Reference: \_\_\_\_\_  
(Communication Enclosing Material)

Description: ☒ Original notes re interview of  
\_\_\_\_\_

2-10-88  
af

b6  
b7C

b6  
b7C  
b7D



Field File No. 196A-4834-1A9

Serial # of Originating Document \_\_\_\_\_

OO and File No. 2-A.

Date Received 2-4-88

From FBI  
(Name of Contributor)

\_\_\_\_\_  
(Address of Contributor)

2-A7 Calif.  
(City and State)

By \_\_\_\_\_  
(Name of Special Agent)

To Be Returned ☐ Yes ☐ No Receipt Given ☐ Yes ☐ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6(e), Federal Rules of Criminal Procedure ☐ Yes ☐ No

Title:

Reference: \_\_\_\_\_  
(Communication Enclosing Material)

Description: ☒ Original notes re interview of

\_\_\_\_\_

3-1-88  
JH

b6  
b7C

b6  
b7C

196A-4834-1A9

b6  
b7C

2-4-88

CAC

took pension funds from investors  
and invested funds with people who  
had strong real estate collateral.

Edician, CFO

would assign pool numbers to  
investments. Pools represented amounts of  
money invested by investor, varying  
rates, duration of investment.

Investor and pool number be same but  
may have greater numbers, only dollar  
match up.

All ~~investor~~ funds came from trust -  
last one ~~about~~ <sup>1123</sup> ~~about~~ <sup>of</sup> Santa Barbara  
U.S. Trust to receive collateral

before funds released to CAC. Collateral  
usually deeded of trust to U.S. Trust before  
funds released to CAC.

not sure if funds commingled, I think to  
one acct - the general acct. loaned <sup>disbursed</sup> from  
that acct. Loan draws, paydowns  
handled by [redacted]

b6  
b7C

[redacted] would get request for loan  
payoffs [redacted]

Tacciani in mid 1987 wanted notices sent  
to borrowers for interest past due, more  
not coming than were coming. for  
[redacted]

[redacted] Some  
employees had loans. [redacted] not know  
off unsecured loans made or <sup>invested</sup> funds  
furnished directly to CAC without first  
going to V.D. Ernst.

[redacted]  
indicated funds were insured by  
BNAcorn S.A.R.L. understanding through  
[redacted]

[redacted] That Ellsworth involved in getting  
insurance for CAC invested funds - never  
had discussion with Ellsworth re insurance.

[redacted] based insurance  
was in place, true, [redacted]  
[redacted]

not discuss insurance with Tacciani

[redacted] had fill on Busicorp

b6  
b7C

Ellsworth received large amounts of loans.  
Ellsworth had varying properties as  
collateral. Ellsworth had Desert Travel  
and Luttana

[redacted] recalls payoffs up to July 30/  
1987 - princ and interest

not know of any line of credit. Also  
not know of any discrepancies in cash  
received by borrowers or book entries

[redacted] aware of  
only source of income from loan  
spread

not know of any situation where loan  
undercollateralized acc - [redacted]

[redacted]

[redacted] - How long  
Knowledge of [redacted] - Luciano, Ellsworth  
Lands.

Did she have loans with CAC.  
How operation worked.

[redacted] Knowledge  
[redacted]  
[redacted]  
[redacted]

~~///~~

Field File No. 196A-4834-1A10

Serial # of Originating Document \_\_\_\_\_

OO and File No. 2-A

Date Received 2-18-88

From FBI  
(Name of Contributor)

\_\_\_\_\_  
(Address of Contributor)

2-A, Calif.  
(City and State)

By   
(Name of Special Agent)

To Be Returned ☐ Yes ☐ No Receipt Given ☐ Yes ☐ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6(e), Federal Rules of Criminal Procedure ☐ Yes ☐ No

Title: CAC

Reference: \_\_\_\_\_  
(Communication Enclosing Material)

Description: ☒ Original notes re interview of

3-8-88  
Jb

b6  
b7C

b6  
b7C

2-18-88

196A-4834-LA10  
19



b6  
b7C



b6  
b7C



Investments - take funds, loan to borrowers, not involved in qualifications for loans or who loaned to -

Source of income - spread between loan<sup>rate</sup> and investment rate.

All funds into general acct. and dispersed from general acct.

QAP paid trustee, trustee paid ~~investor~~ investor to UST, CAC request drawdown to general acct. to borrower. not aware of how~~down~~ down of paperwork required.

direct some borrowers not paying interest, interest to investors had to come from subsequent ~~borrowers~~ investors

~~last insurance document~~ Insurance from Busicorp: per investor note - [redacted]

b6  
b7c

not aware of officer or employee drawdowns on borrower assets;  
not involved or aware of links of credit, collateral, kickbacks.

Salary to

[redacted] a month plus expenses  
Salespersons - salary + commission  
Taxi - \$6000 month plus expenses  
benefits (car, medical, etc.)

[redacted] loan  
balances building up further giving them  
not money or not paying interest [redacted]  
not respond, loan balances kept going  
up until receiver.



CAC issued commercial paper. <sup>pay</sup> Interest only until mature. Funds not released through US Trust. Funds into general acct. Assumption insured via note.

not [redacted] job to question [redacted]

b6  
b7C

[redacted] broke collar

don't [redacted]

not discuss business with Gray or Sacciani.

got aware Ellsworth previously involved with CAC.

[redacted] handled comm. paper and checks; [redacted]

[redacted]

Field File No. 196A-4834-1A 11

Serial # of Originating Document \_\_\_\_\_

OO and File No. L-9.

Date Received 5-26-88

From FBI - DL  
(Name of Contributor)

\_\_\_\_\_  
(Address of Contributor)  
L-9, Calif  
(City and State)

By \_\_\_\_\_  
(Name of Special Agent)

To Be Returned ☐ Yes ☐ No Receipt Given ☐ Yes ☐ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6(e), Federal Rules  
of Criminal Procedure ☐ Yes ☐ No

Title: eac

Reference: \_\_\_\_\_  
(Communication Enclosing Material)

Description: Original notes re interview of

\_\_\_\_\_

7/14/88  
dmk

b6  
b7C

b6  
b7C  
b7D

Last Notes  
on

RL

b6  
b7C  
b7D

5-26-88

b6  
b7C  
b7D

all 1982

[redacted] introduced [redacted] to [redacted] and [redacted] of [redacted] and [redacted] of CAC [redacted] said CAC in business [redacted] also met [redacted] about this time [redacted]

[redacted] and [redacted] "lent pension funds" [redacted]

a month later [redacted]

[redacted] discussed property with CAC. [redacted] want to construct a pulp plant in Alaska run by [redacted]

[redacted] [redacted] said, no problem [redacted]

[redacted] made "special" loans to [redacted] [redacted] as a favor. [redacted] needed to close that and get cash from [redacted]

2

b6  
b7C  
b7D

I decide some people have problems, a lot of  
solutions:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

learned from [REDACTED]  
that [REDACTED] had news  
involved in "Yabotaga" [REDACTED]

Aqua Control - shell corporation - no funds -

[REDACTED]  
[REDACTED]

5

b6  
b7C  
b7D

Aggregate Processing - Travel processing  
Get one loan for \$500,000.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[redacted]  
Wright Schubert (ph.) Engineering  
Seattle, Wash.

[redacted] bail illegal,  
~~for~~ way loans furnished [redacted]

[redacted]  
[redacted] to pay engineering  
firm.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

DUE

had not enough income to pay off loans.



CAC appraiser [redacted], Alaska, NM -  
Hired by CAC, summer 1985, [redacted]  
appraised all of PWT properties.

b6  
b7C  
b7D

Met Ellsworth [redacted]  
in Fall, 1984. F. vouched for Ellsworth -  
[redacted]  
[redacted]  
[redacted]

8

b6  
b7C  
b7D

[redacted] and Ellsworth  
meet in Newport Beach - [redacted]  
[redacted] of 20  
people.

met [redacted] through Ellsworth.  
[redacted] set up insurance in Europe.  
Ellsworth said hired [redacted] to  
set up insurance to bond CAC  
notes and other bonding.

[redacted]

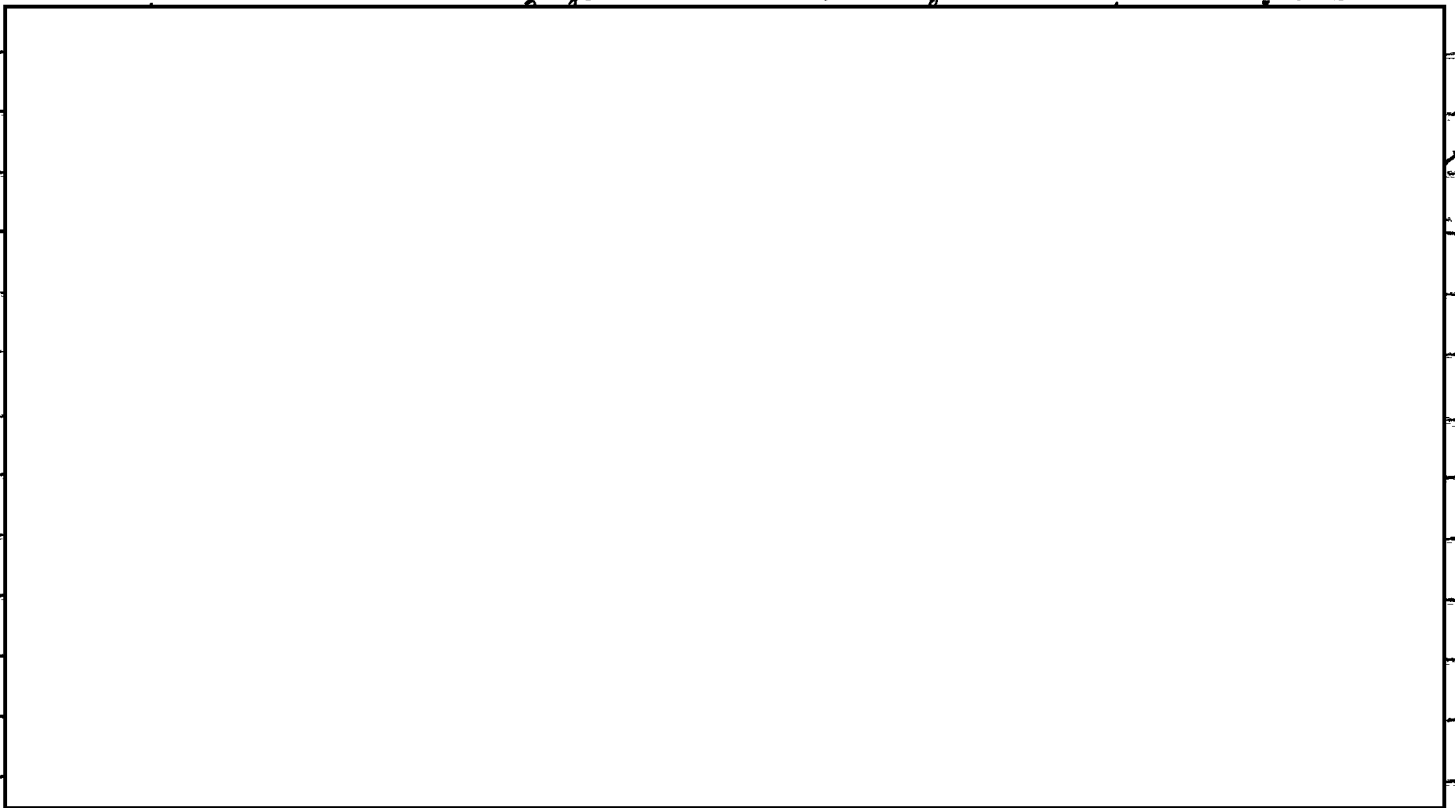
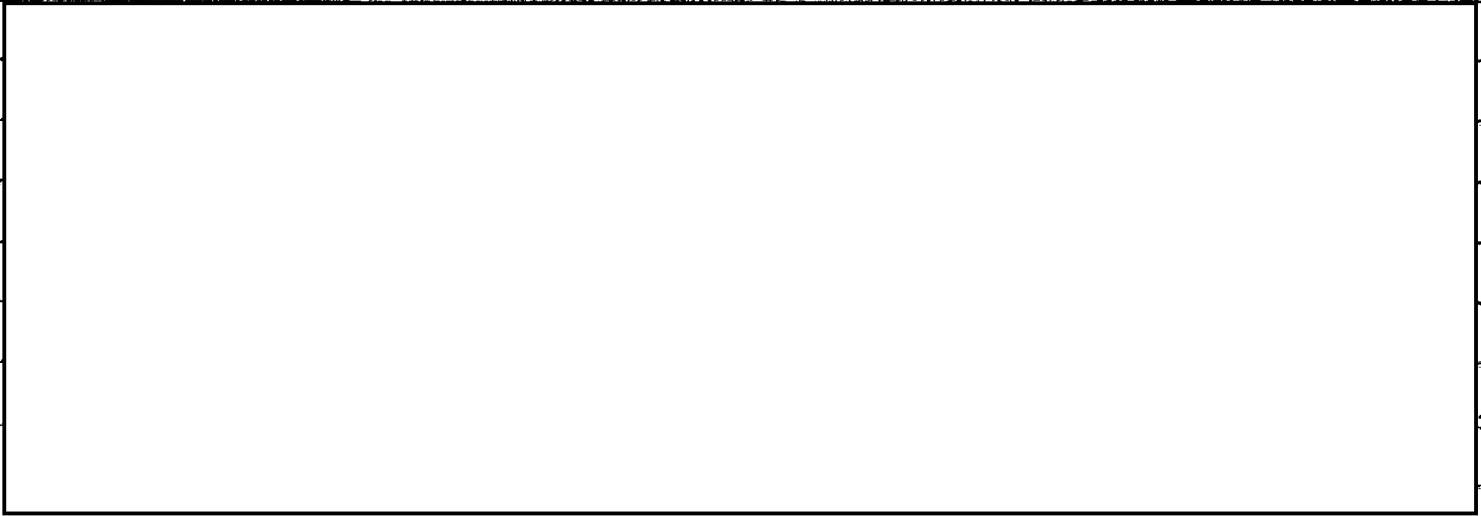
[redacted]

[redacted]

[redacted]

8

b6  
b7C  
b7D



Ellsworth later tells [ ] that property  
accepted as collateral. Around 7-9-  
Ellsworth tells [ ] that Business Bully  
~~with~~ capitalizing [ ]



Lacciani, Ells- [redacted] considering  
 having business offices in C & C.  
 Ellsworth said insurance requirements  
 were met by 35 to 1 ratio. Ells said  
 all requirements met if Russians ability to  
 do business in Calif. with operation  
 of ~~a treaty~~ between Russians and  
 insurance entities. [redacted]

b6  
 b7C  
 b7D

[redacted] said never received  
 premiums for bond insurance. [redacted]

[redacted] Ellsworth admitted not  
 paying premiums. Lacciani [redacted]

8/85 Ellsworth tells [redacted] he has another  
 insurance company called Lateral Insurance.  
 Ell said with any kind of insurance  
 bond in US with FRT. [redacted] and

~~Elsworth~~ Elsworth lead up IRT, Elsworth said IRT is 'Lichtenstein' and is cheap and can write any type of words.

documents -

(12)

[redacted]

[redacted]

signature; Did it himself

2.)

[redacted]

b6  
b7C  
b7D

[redacted]

3.)

[redacted]

4.)

[redacted]

5.)

[redacted]

[redacted]

6.)

8-14-85

not known

[redacted]

7.)

[redacted]

never seen before -  
way he signs name

8.)

[redacted]

never seen before  
way he signs name

9.) [redacted]

not seen

b6  
b7C  
b7D

10.) [redacted]

not seen

[redacted]

[redacted]

[redacted]

11.) [redacted]

[redacted]

[redacted]

12.) [redacted]

[redacted]

signature

[redacted]

not know where stood

[redacted]

b6  
b7C  
b7D

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]



Field File No. 198A-4834 1A 12

Serial # of Originating Document \_\_\_\_\_

OO and File No. 2-A.

Date Received 4-7-88

From FBI  
(Name of Contributor)

\_\_\_\_\_  
(Address of Contributor)

L.A., Calif.  
(City and State)

By \_\_\_\_\_  
(Name of Special Agent)

To Be Returned ☐ Yes ☐ No Receipt Given ☐ Yes ☐ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6(e), Federal Rules of Criminal Procedure ☐ Yes ☐ No

Title: ecr, etal  
FAW, MF

Reference: \_\_\_\_\_  
(Communication Enclosing Material)

Description: ☒ Original notes re interview of

\_\_\_\_\_

re:  
Serial  
61  
7/14/88  
dnk

b6  
b7C

b6  
b7C  
b7D

196A-4834

4-7-88

b6  
b7C  
b7D

IP borrowed money from CAC. During  
1983, [redacted]

[redacted] met David  
Zaccari, [redacted] of CAC name unrecalled,  
and female V.P. name unrecalled.

2

b6  
b7C  
b7D

[redacted]

[redacted]

Payments to CAC for loans.  
Payments not sent up. [redacted]

[redacted]

met [redacted] through [redacted]  
+ Giacani - [redacted]

[redacted]

[redacted] gave impression he was  
associated with wagner but not  
know exact relationship.

[REDACTED]

[REDACTED]

[REDACTED]

not aware of any loans made to  
CAC ministers pensioners by

[REDACTED]

known name Ellsworth, never met him

[REDACTED]

b6  
b7C  
b7D

[REDACTED]

[REDACTED]

not aware of any assoc. of CAC  
people with [REDACTED]

[REDACTED]

no conversations with CAC re  
delinquent payments. Liked a line  
of credit. Not aware of foreclosures  
on [REDACTED]

Not know of any <sup>business</sup> relationships between  
[REDACTED] and Douglas Steel

Only knew CAC a lending institution.

Field File No. 196A-4834 1A13

Serial # of Originating Document \_\_\_\_\_

OO and File No. L-A.

Date Received 3-3-88

From FBI  
(Name of Contributor)

\_\_\_\_\_  
(Address of Contributor)

L-A., Calif.  
(City and State)

By \_\_\_\_\_  
(Name of Special Agent)

To Be Returned ☐ Yes ☐ No Receipt Given ☐ Yes ☐ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6(e), Federal Rules of Criminal Procedure ☐ Yes ☐ No

Title: CAC

Reference: \_\_\_\_\_  
(Communication Enclosing Material)

Description: ☒ Original notes re interview of

\_\_\_\_\_

7/19/88  
AMR

b6  
b7C

b6  
b7C  
b7D

196A-4834

3-3-88

b6  
b7C  
b7D

1983 - Facciani and taking over Hughes  
stock. [redacted]

[redacted] Facciani was  
a Principal of CAC. [redacted]

CAC, Facciani and [redacted] of  
CAC and [redacted] loaned to  
International Glacier about 11 million.

[redacted] To pay back the loan on demand  
from CAC to Int'l Glacier. Loan  
backed by Int'l Glacier. [redacted] place  
to receive 37 1/2% of Hughes stock.

[redacted] Later learned Facciani principal  
of Commercial Risk. [redacted]

[Redacted]

b6  
b7C  
b7D

[Redacted]

[Redacted] thought Gacciani and  
principals of Hughes Steel [Redacted]  
[Redacted]

[Redacted]  
[Redacted]

[Redacted]  
[Redacted]

[Redacted]

[Redacted] Gacciani  
[Redacted] CAC tried to  
sell int'l place products without  
[Redacted] authorization.

[Redacted]



Field File No.

196A-4834 1A141

Serial # of Originating Document

OO and File No.

2-91

Date Received

3-1-88

From

FBI

(Name of Contributor)

(Address of Contributor)

L.A., Calif.

(City and State)

By

[Redacted]

(Name of Special Agent)

To Be Returned ☐ Yes ☐ No Receipt Given ☐ Yes ☐ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6(e), Federal Rules of Criminal Procedure ☐ Yes ☐ No

Title:

CAK

Reference:

(Communication Enclosing Material)

Description: ☒ Original notes re interview of

[Redacted]

7/14/88  
dmr

b6  
b7C

b6  
b7C

Facciani introduced [redacted] to Ellsworth  
Spretnak in 1985. Facciani and  
Ellsworth an expert in putting companies  
together. Later learned Ellsworth a  
partner of CAC. CAC leased 7-9  
floors - Ellsworth leased 8<sup>th</sup> floor - sublet  
[redacted] not known if  
Ellsworth actually paid rent.

[REDACTED]

~~document~~

[REDACTED]

[REDACTED]

[REDACTED] Ellsworth  
told [REDACTED] he owned stock in CAC.  
Ellsworth elected to be a director of CAC  
along with [REDACTED] made  
VP of marketing.

[REDACTED]

[REDACTED]

[REDACTED]

met [REDACTED] and another from Europe  
who wrote insurance. Not remember who  
told him that.

[REDACTED]

properly [REDACTED] was [REDACTED]

Hughes Steel - Faciani had opportunity to  
buy Alpha Steel in 1982 or 1983 - Faciani

[REDACTED] called it Hughes  
Steel and Tube? [REDACTED]

[REDACTED] ~~not know~~

Faciani's ~~said~~ told [REDACTED] he was  
a consultant for Hughes. CAC made  
loans to Hughes. Ellsworth took  
over Hughes Steel after as going through  
bankruptcy after bankruptcy CAC got  
Hughes equipment Ellsworth created  
new note with CAC replacing

Hughes note - Ellsworth assumed note  
under Hanson Trbl, Ellsworth's company  
[redacted]

b6  
b7C

1986/87

[redacted] and  
not worth what it ~~was~~ ~~when purchased~~  
appraisals said. Told Facciani this,  
Facciani said [redacted] understating  
value.

Field File No.

196A-4834 1A5

Serial # of Originating Document

OO and File No.

LA

Date Received

1-7-88

From

FBI

(Name of Contributor)

(Address of Contributor)

(City and State)

By

(Name of Special Agent)

To Be Returned ☐ Yes ☐ No Receipt Given ☐ Yes ☐ No

Grand Jury Material - Disseminate Only Pursuant to Rule 6(e), Federal Rules of Criminal Procedure ☐ Yes ☐ No

Title:

CAC

Reference:

(Communication Enclosing Material)

Description: ☒ Original notes re interview of

b6  
b7C

b6  
b7C  
b7D

7/14/88  
dmc